

Meeting materials and electronic document execution

Regulation Impact Statement
Department of Treasury

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Background/Current setting

On 5 May 2020, the Treasurer used his temporary instrument-making power under the *Corporations Act 2001* (the Act) to issue a determination that temporarily allowed companies to use technology to satisfy their legal obligations concerning meetings and document execution. The temporary instrument-making power allowed the Treasurer to provide short-term regulatory relief to those who are unable to meet their obligations under the Act due to the Coronavirus crisis. This determination supported companies so they could continue to operate while still meeting social distancing requirements brought about by the Coronavirus crisis. The temporary reforms allowed companies and their officers to:

- validly execute documents electronically;
- provide meeting-related materials electronically; and
- hold wholly virtual meetings.

Due to the ongoing challenges posed by the Coronavirus crisis, the Treasurer subsequently remade the determination to extend the relief until 21 March 2021. On 10 August 2021, the Government renewed the temporary measures through the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*. This temporary relief will expire on 31 March 2022.

In the meantime, the Government announced as part of the Digital Business Plan in the 2020-21 Budget, that it would consult on making the reforms permanent. Following consultation, the Government announced on 17 February 2021, that it would progress:

- permanent reforms that will facilitate companies and their officers to validly execute documents and send meeting-related materials electronically; and
- conduct a 12-month opt-in review of annual general meetings to enable a proper assessment of the benefits of using technology to engage with members.

The permanent reforms in respect of document execution and sending meeting-related materials are the subject of this Regulation Impact Statement. The reforms clearly articulate that the law clarifies that physical, hybrid or virtual meetings (if expressly permitted by constitutions) can be held. Following the abovementioned review of annual general meetings, a separate Regulation Impact Statement will be drafted for meetings, covering the rules that are being consulted on as part of the *Corporations Amendment (Hybrid Meetings) Bill 2021*, drawing on the information obtained as part of the review.

1. What is the problem you are trying to solve?

Prior to the temporary determinations and legislated relief, companies were restricted in their ability to use technology to comply with the requirements related to document execution and meeting documents, respectively found under section 127 and Chapter 2G of the Act.

1.1 Valid document execution requirements

Section 127 of the Act sets out a process for companies to validly execute a document containing legal rights and/or obligations, such as a contract or a deed. It provides that a company will have validly executed the document if two directors of a company, a director and secretary of a company or a sole director for a proprietary company sign the document or witness the affixation of the common seal of the company to the document.

The purpose of prescribing this process is to provide certainty for counterparties transacting with companies of their legal rights and obligations in respect of a company and to set expectations that companies set up internal corporate governance mechanisms to ensure that documents are only executed when a company intends to be bound by legal rights and obligations.

The current process, legislated in 2001, does not align with the Government's plans to enable businesses to take advantage of existing and emerging digital technologies. To be able to rely on section 127 of the Act to validly execute documents, it is generally taken that the physical presence of company officers to sign a paper document using wet-ink or to witness the affixation of the common seal is required. This requires company officers to physically meet or for companies to pay for the document to be transported in hard copy. These costs are incurred unnecessarily, because there is technology now available that allows company officers to sign or witness documents without meeting or transporting a hard copy document, and it is well within the capabilities of any company to ensure that these technologies are used effectively where a company intends for rights and obligations to be legally binding. Recently released consultation on Modernising Document Execution by the Department of the Prime Minister and Cabinet indicates that over 4.5 million deeds and more than 3.8 million statutory declarations are made each year by small and medium enterprises and consumers and reforms to the execution of these documents are estimated to save over \$400 million in direct costs and time wasted each year.¹

1.2 Meeting-related documents requirements

Chapter 2G of the Act requires companies to provide a series of documents to members that are related to meetings. These include notices of the meeting, resolutions and member statements, proxy forms and when requested, minute books. The purpose of these requirements is to enable and encourage member engagement with the operations of the companies in which they are invested.

Again, these requirements do not align with the Government's plans to enable businesses to take advantage of existing and emerging digital technologies. If a company must provide notice of meetings and other meeting-related material via post, unless a member has nominated an electronic address, they cannot take advantage of modern technologies that could be more cost efficient for sending meeting notices than postal services.

This means that companies are unnecessarily incurring significant costs, given how widely accepted the use of technology is:

- In its 2018-19 Communication Report, the Australian Communications and Media Authority highlighted the widespread use and growth of electronic communication, stating that approximately 91 per cent of

¹ *Modernising Document Execution. Consultation on a common pathway for digital execution of statutory declarations and deeds*, Department of Prime Minister and Cabinet, September 2021.

<https://deregulation.pmc.gov.au/sites/default/files/modernising-document-execution-consult.pdf>

Australians adults have a home internet connection and over 83 per cent of Australian adults own a smart phone².

- This is reflected among the shareholding population – during public consultation, one major share registry indicated that over 90 per cent of their interactions with members are via digital channels, not telephone or mail, and other industry data³ suggests that voting in respect of companies in the ASX50 and ASX300 is primarily executed digitally (54 per cent and 60 per cent respectively).

In previous consultations undertaken by Treasury for the temporary and permanent reforms to allow the use of technology to send and sign documents, industry provided the following examples to illustrate this point:

- An ASX10 company that sent 600,000 notifications to advise members that meeting materials (including proxy forms) were available online, and only received 100 requests to send proxy forms via post;
- Link Group indicated that the average return rate of proxy forms sent by post in 2019 was 3.87 per cent, despite the inclusion of business reply envelopes;
- An ASX20 company with a 35 per cent retail member base reported that out of 60,880 hard copy forms that were posted, only 2,381 proxy forms were returned by mail; and
- At least 20,000 notices of meeting and other documents are being posted to addresses that are incorrect, and therefore are incurring these costs even though members are not reading this material.

This indicates that companies are incurring costs associated with posting hard copy materials due to legislative constraints which limit the extent to which companies can adopt new technology options.

2. Why is Government action needed?

The social distancing requirements arising out of the Coronavirus crisis has caused companies to invest in their technological capabilities. The public has mirrored this investment in digital literacy, to stay in touch with their family, friends, and workplaces – and the companies in which they have an interest, as facilitated by the temporary reforms in response to the Coronavirus crisis.

The main objective of the Government’s reforms is to ensure that where substantive statutory requirements can be met using digital technologies, the law allows companies and their officers to choose to do so. As the conditions of validly executing documents and obligations to send meeting-related materials are articulated in statute, they can only be amended through Government action to amend legislation.

² *Communications Report 2018-19*, Australian Communications and Media Authority, February 2020. <https://www.acma.gov.au/sites/default/files/2021-02/Communications%20report%202018-19.pdf>

³ *AGM Intelligence 2020, The Driving Forces behind AGM Outcomes*, Computershare, 2020, https://www.computershare.com/News/AGM%20Intelligence%202020_interactive.pdf, pages 14-15.

3. What policy options are you considering?

The Government sought informal feedback on the temporary reforms from industry groups, companies, share registries, the legal profession and investor representatives. This feedback informed the development of the draft law for the permanent reforms. Consultation on the permanent reforms was conducted on 19 October 2020 to 6 November 2020; 25 June 2021 to 16 July 2021; and 30 August 2021 to 16 September 2021. The consultations involved both face-to-face (and virtual) meetings with stakeholders and provided an opportunity for the public to provide submissions.

This consultation process has informed the identification of the following options:

1. Continue with the law as it stood prior to the introduction of temporary reforms (status quo).
2. Make permanent the temporary reforms as is, which will allow the use of technology to meet legal requirements in respect of document execution and sending meeting-related materials.
3. Make permanent the measures in the temporary reforms with some modifications to improve their operation.

3.1 Option 1 – Maintain the status quo

Option 1 involves companies adhering to the provisions under the Act that were in place prior to the temporary determinations and legislated relief in response to the Coronavirus crisis.

Document execution

In relation to document execution, this means that following the expiration of the temporary relief on 31 March 2022, counterparties to a transaction may not be able to legally rely on the rights and obligations contained in a document if a company has used technology to execute it. Section 127 of the Act only provides a mechanism for valid document execution if:

- the same document is physically signed (wet-ink signature) by either two directors of a company, a director and secretary of a company or a sole director for a proprietary company: or
- the common seal of the company is fixed to the document and the fixing of the seal is physically witnessed (wet-ink signature) by either two directors of a company, a director and secretary of a company or a sole director for a proprietary company.

Meeting-related materials

In relation to meeting-related materials, this means that unless a member has consented to receiving documents (such as meeting notices, and certain resolutions and statements) electronically, a company can only satisfy regulatory requirements by posting hard copies. Where required, they must sign a hard copy of these documents using wet-ink. and must keep, retain, and provide minute books in hard copy.

3.2 Option 2 – Make permanent the temporary reforms

Option 2 involves permanently implementing the temporary reforms introduced by the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*, in respect of sending meeting materials and document execution.

Document execution

These temporary reforms allow company officers to validly execute a document, by signing it or a copy of the document electronically. It allows company officers to use technology to validly execute a document, by using electronic means to witness the affixing of the common seal of the company.

Meeting-related materials

These temporary reforms allow companies and their officers to satisfy statutory requirements to send meeting-related materials electronically, regardless of whether members previously provided consent. The temporary reforms allow meeting minutes to be kept, retained and provided electronically.

3.3 Option 3 – Make permanent the temporary reforms with modifications to improve the operation of the reforms

Option 3 has been developed following feedback from three rounds of consultation with stakeholders currently making use of the temporary reforms. As with Option 2, it involves modifying the requirements in the Act, in respect of the execution of company documents and meeting-related materials.

Option 3 incorporates drafting techniques which will enable the Government to more easily expand the scope of these reforms to apply more broadly to requirements to sign and send documents across the Act. These further changes are being considered and Treasury will consult on them as part of the Modernising Business Communications project. This project seeks to reduce regulatory burden and increase the technology neutrality of all legislation across the Treasury portfolio. It has the potential to build on these permanent reforms to further reduce regulatory burden on companies.

This option legislates a review clause which requires the Government to review the effectiveness of the proposed legislation as soon as practicable, two years after its commencement.

Document execution

In respect of execution of company documents, reforms will be expanded explicitly to:

- clarify that companies and their officers (including company agents) will be able to create and sign deeds, as well as other documents, electronically;

- allow documents to be validly executed in technology neutral and flexible manners by permitting persons to sign documents using a mixture of electronic and wet-ink methods and not requiring all signatories to sign the same copy of a document;
- allow a person who is signing a document in multiple different capacities to sign once in multiple different capacities;
- allow the use of technology to execute documents with a common seal electronically, including by allowing witnesses to validly witness the fixing of a company seal electronically;
- ensure that deeds do not need to be signed on paper, parchment or vellum to be executed and remove the common law requirement of formal delivery; and
- ensure that the Australian Securities and Investments Commission (ASIC) or a Registrar (any Commonwealth Body appointed under the Act to carry out registry functions and powers) cannot refuse to receive or register a document that is signed in accordance with the technology neutral signature provisions.

The reforms will allow company agents to execute a deed without a witness. Traditionally witnessing the execution of a deed in this way would require physical signing and witnessing of the document. The requirement has been removed to facilitate technology-neutral signing and was informed by consultation with stakeholders. Stakeholders stated that the witnessing requirement provided little, if any, certainty about the execution of the document as any person may be a witness (they do not have to be known to the party) and there are no requirements for the witness to know the signer or satisfy themselves as to the signer's identity.

The proposed legislation includes reforms that expand the statutory validation for the execution of company documents to cover circumstances where these documents are executed by directors and company secretaries, as well as sole directors who are also the company secretary.

Meeting-related materials

In relation to the requirements in respect of meetings, the measures differ from the temporary reforms introduced by the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*, in that they:

- allow companies to choose whether to satisfy their obligations to provide documents to recipients by providing hard copy documents or by using electronic means unless a member makes an election to receive documents in a certain manner;
- allow companies to send documents in five ways: in hard copy; electronically; physically with access to information electronically (e.g., physical postcard); electronically, with access to information electronically (e.g., electronic postcard); or by posting the information on a website, if the document is an annual report or otherwise permitted by the regulations;
- expand the scope of documents which a company may send in one of those five ways to include all documents sent by a company related to meetings to anyone, not just to members;
- provide companies with a period of 30 days to comply with a new member election to receive documents in hard copy;
- allow members the flexibility to elect to receive documents in a particular format on a once off basis;
- require public companies and registered schemes to notify members of their election rights by either providing them with a notice once a year, or by publishing that information on a website; and
- consistent with members' current rights to elect not to receive annual reports, provide members with the option to elect not to receive annual reports or certain other documents that are prescribed by the regulations.

These provisions will come into effect on 1 April 2022, after the temporary relief expires. This will give companies clarity and certainty on their ability to rely on the temporary reforms until 31 March 2022 and sufficient time to prepare for the new provisions.

4. What is the likely net benefit of each option?

4.1 Option 1 – Status Quo

This option does not achieve the Government's objectives of ensuring that where substantive statutory requirements can be met using digital technologies, the law allows companies and their officers to do so.

Document execution

Without reforms, companies must generally execute documents in person using wet-ink on hard copies. Accordingly, company officers will have to execute documents in hard copy, with a wet-ink signature, in person. Companies will continue to incur the costs associated with directors having to travel locally, from interstate or overseas and the printing costs to execute a document in person. There may be postal delays that may impose on the documents being executed in a timely manner.

Meeting-related materials

Companies must post meeting-related materials where members have not consented to receiving documents electronically; keep, retain, and provide meeting minutes in hard copy; and sign meeting-related documents using wet-ink on hard copies.

The costs of posting meeting materials are significant. According to industry estimates, around 50 per cent of a company's member base have actively elected to receive notices of meeting via email. For the remaining portion of shareholders, companies are required to send a paper notice of meeting, and meeting materials by post. This requirement is costly and unnecessary for companies.

For example, of the 600,000 notifications that were sent to members from an ASX10 company advising the availability of the notice of meeting and proxy form online, only 100 requested hard copies. Industry estimates suggest that the costs could range between \$250,000 and \$1,000,000 per meeting. One industry source suggested that the ASX20 alone spends around \$13 million on mail-outs per AGM season. For example, Telstra printed and posted approximately 650,000 hard copy notices of meetings for its 2019 AGM, which was estimated to cost between \$800,000 and \$1,000,000. AMP Limited estimated the cost in printing and posting notices of meeting is approximately \$400,000 per year. These costs do not include labour costs.

Smaller companies, including not-for-profits, incur significant costs. An estimate from one club suggested that they spent approximately \$70,000 on posting paper notices to its 41,000 members per year. As post becomes less common in society overall, in turn, printing and postage costs are increasing.

4.2 Option 2 – Make permanent the temporary reforms

Stakeholders have unanimously welcomed the temporary reforms in the context of the Coronavirus crisis. However, as a permanent measure, stakeholders suggested that this option may not fully achieve the Government's objectives of ensuring that where substantive statutory requirements can be met using digital technologies, the law allows companies and their officers to do so.

Document execution

This option permits a more effective use of technology, particularly if the trend of working from outside the office continues. As a result of the Coronavirus crisis and social distancing measures, companies have invested significantly in their IT infrastructure to facilitate their staff to work from home. Making permanent changes to allow valid document execution to occur electronically will not require staff to travel to work or between offices to execute documents.

However, further flexibility could be provided for companies to use technology. Stakeholders suggested that clarification as to whether the legislative reforms supported the technical requirements for the execution of deeds, would further support companies to use technology. Stakeholders provided feedback in support of clarifying that an authorised agent may execute a deed on behalf of the company.

Some stakeholders raised concerns about fraud in using electronic means to execute documents. In theory, a person may execute a document without appropriate authority. However, whether this is done electronically or physically, such an execution will not be valid and could entail criminal consequences depending on the circumstances. However, initial stakeholder feedback has indicated that the same methods used to confirm that a company officer has in fact physically signed or witnessed the application of a seal to a document under current law, can be used to confirm that a company officer has done so electronically. Furthermore, the use of electronic technologies is more likely to leave an audit trail, if required.

Methodology used to estimate regulatory burden for document execution

To determine the costs associated with executing a document in person, the following assumptions have been incorporated into the methodology:

- An estimate of 918,000 active companies operate in Australia.
- On average, 50 per cent of businesses execute one document every fortnight.
- If directors are working from home or in disparate locations, two directors are required to commute one hour each to execute a document at the same location.
- OBPR work-related labour cost of \$73.05 per hour.
- Time cost of printing and other mailroom activities involved in sending a letter is approximately two minutes.
- Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.

As for electronic document execution, the following assumptions have been incorporated into the methodology:

- Sophisticated web-based signing services are an optional extra which are not required by companies that wish to electronically execute documents.
- 50 per cent of directors will use electronic document execution methods.
- 50 per cent of directors will be working from home or in different offices (and therefore are required to travel to execute documents); over a 10-year period, this number would fall to 25 per cent.
- It takes one minute to send an electronic document.
- The directors who work from home will save on printing and postal costs to send documents between companies as well as travel costs.
- The directors who will execute documents from their workplace will save only on printing and postal costs.

The estimated average regulatory saving as a result of allowing electronic document execution is estimated at \$392 million a year.

Meeting-related materials

This option permits companies to electronically satisfy requirements to provide meeting-related materials, without members having positively elected to receive electronic documents. This reduces regulatory costs, as the costs of sending electronic notices is much cheaper than by post. One estimate suggested that it costs approximately \$0.045 per electronic notice, compared to \$2.20 per posted notice.

Methodology used to estimate regulatory burden for meeting-related materials

Regulatory savings come from companies signing and sending documents electronically.

Based on the range of industry estimates provided through consultation, the following assumptions were made to determine the regulatory savings of allowing legal requirements in respect of sending meeting-related materials to be met using technology:

- Listed companies will be able to email meeting materials to around half of the approximately 50 per cent of 20 million members per year.
- OBPR work-related labour cost of \$73.05 per hour.
- Time cost of printing and other mailroom activities involved in sending a letter is approximately two minutes.
- Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.
- All members who haven't provided an email address receive a postcard with directions to access meeting materials online.

The estimated average regulatory saving as a result of allowing electronic sending of meeting-related materials is approximately \$20 million a year for businesses. The regulatory savings are calculated as an average over 10 years

Regulatory burden estimate (RBE) table

Overall, Option 2 results in an average saving of \$412 million per year. This is a result of combining the savings associated with electronically sending meeting-related materials (\$20 million) and electronic document

execution (\$392 million). There were no other identifiable costs or benefits raised by stakeholders during consultation.

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	-\$412	\$0	-\$412

4.3 Option 3 – Make permanent the temporary reforms with modifications to improve the operation of the reforms

This option goes further to achieve the Government’s objectives of ensuring that where substantive statutory requirements can be met using digital technologies, the law allows companies and their officers to do so.

Document execution

In relation to document execution, companies and members will continue to have the advantages of the measures related to document execution outlined under Option 2.

However, Option 3 provides further flexibility and clarity as to the methods that companies may use to execute documents, which will further reduce regulatory burden. This option clarifies that deeds can be validly executed in technologically neutral and flexible ways, and deem documents as validly executed even if the witnessing of a common seal of the company occurred via electronic means. After receiving stakeholder feedback, this option further clarifies the practical assumptions and guidance as to how documents can be signed.

This provides companies a greater range of choices to validly execute documents, so that they can choose the most efficient one for their circumstances, and whatever they chose, counterparties can rely on the rights and obligations in the executed document.

Methodology used to estimate regulatory savings for documents execution

The same assumptions as in Option 2 have been used for Option 3 about the number of companies and the postal costs.

The new assumption included in the methodology are as follows:

- On average, businesses execute one deed every year.
- The regulatory savings for deeds are calculated using the same method for the electronic execution of documents. By allowing for electronic execution of deeds there is an average regulatory saving of \$30 million per year (over 10 years).
- There are an estimated 70,000 active proprietary companies with a sole director and no company secretary. Assumes 50 per cent of directors have already provided for electronic execution in their constitution and do so already.
- The estimated savings do not include savings associated with being able to execute documents with a common seal electronically, including by allowing witnesses to validly witness the fixing of a company seal

electronically. It is assumed that if companies choose an electronic method, they will choose the more efficient between the signature and common seal methods.

- There are no additional associated savings with provisions relating to company officers, including company agents, executing documents as the option increases the flexibility to execute and makes it easier to practically sign documents.

Combining the regulatory savings relating to electronic execution of documents from the temporary measures with the new regulatory savings results in an overall regulatory saving of \$430 million per year⁴ (over 10 years).

Meeting-related materials

The differences between this option and Options 1 and 2, is that Option 3 allows members to opt-in to receiving meeting materials electronically or in hard copy. This option ensures that members are notified of their ability to make an election, while giving companies the flexibility to provide this notification in one of five ways: in hard copy; electronically; physically with access to information electronically (e.g., physical postcard); electronically, with access to information electronically (e.g., electronic postcard); or by posting the information on a website, if the document is an annual report or otherwise permitted by the regulations. This option provides a means to allow companies to choose the default method of satisfying their obligations to provide documents in the manner that best suits them. It allows members to make elections about receiving documents in a particular manner, or not receiving permitted classes of documents to suit their preferences.

This option allows companies 30 days to comply with new elections by members to receive documents in hard copy. Stakeholder feedback provided that this would allow companies the opportunity to reduce costs by better planning the number of documents which they will be required to print and potentially reducing the number of 'overs' that a company would be required to allow.

This option provides additional opportunities for companies to use technology because it:

- allows companies to choose whether to satisfy their obligations to provide documents to recipients by providing hard copy documents or by using electronic means unless a member makes an election to receive documents in a certain manner;
- allows companies to send documents in five ways: in hard copy; electronically; physically with access to information electronically (e.g., physical postcard); electronically, with access to information electronically (e.g., electronic postcard); or by posting the information on a website, if the document is an annual report or otherwise permitted by the regulations;
- expands the scope of documents that a company may send in one of those five ways to include all documents sent by a company related to meetings to anyone, not just to members;
- provides companies with a period of 30 days to comply with a new member election to receive documents in hard copy;
- allows members the flexibility to elect to receive documents in a particular format on a once off basis;
- requires public companies and registered schemes to notify members of their election rights by either providing them with a notice once a year, or by publishing that information on a website; and
- consistent with members' current rights to elect not to receive annual reports, provides members with the option to elect not to receive annual reports or certain other documents that are prescribed by the regulations.

⁴ Numbers may not add due to rounding.

These provisions will allow companies greater flexibility to use technology to satisfy regulatory requirements and save associated costs. This option requires a post-implementation review in two years. This will provide the opportunity to assess the effectiveness of these reforms and to determine whether they are operating as intended.

Methodology used to estimate regulatory savings for meeting-related materials

The same assumptions as in Option 2 are used for Option 3, as well as the following new assumptions in the methodology:

- A company sends hard copies to 0.02 per cent of its members that elect to receive hard copies, after they receive notification that materials are available electronically.
- Two documents per meeting must be signed.
- It takes one director one hour to travel to sign hard copy documents.
- Under the current law, companies are required to notify members in relation to the company's annual report. Therefore, the estimated cost savings in relation to notifying members yearly or on the website have not been included as it does not change existing obligations.

The overall regulatory saving for this option in relation to meeting-related materials is approximately \$20 million per year (over 10 years).

Regulatory burden estimate (RBE) table

Overall, Option 3 results in an average saving of \$450 million per year. This is a result of combining the savings associated with electronically sending meeting-related materials (\$20 million) and electronic document execution (\$430 million)⁵.

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	-\$450	\$0	-\$450

5. Who did you consult and how did you incorporate their feedback?

Prior to the Coronavirus crisis, the Government committed to improving the technological neutrality of regulation. In July 2019, the Prime Minister tasked the Assistant Minister to the Prime Minister and Cabinet with establishing the Deregulation Taskforce and invigorating the Government's New Deregulation Agenda. On 15 June 2020, the Government announced the next priority areas for the Deregulation Taskforce which included modernising business communications. This served as an impetus for stakeholders to provide feedback on priority reforms to make legislation technology neutral – including making permanent changes to regulatory requirements in respect of meeting-related materials and document execution.

As a result of the Treasurer using the temporary power to introduce temporary reforms during the Coronavirus crisis, on 5 May 2020, stakeholders have had an unprecedented opportunity to test the operation of legislative

⁵ Numbers may not add due to rounding

amendments. Companies and members alike have been taking advantage of these reforms, sending and receiving meeting materials and executing documents electronically.

As a result of companies and members taking advantage of the temporary reforms, the Government has used this opportunity to receive feedback through a range of avenues, including three public consultations on the exposure draft legislation.

Treasury consultation on the substantive effect of the temporary reforms

The first avenue involved Treasury obtaining data and information on the substantive effect of the temporary reforms from stakeholders and analysing confidential and public communications from industry and investor stakeholders. As a part of this process, Treasury analysed 17 submissions and reports from different stakeholders, and spoke with a range of stakeholders as part of a targeted consultation to understand the virtual AGM experience, how the law works practically and identify areas of the law that could be improved.

Drawing on submissions from the Senate Select Committee on Financial Technology and Regulatory Technology

The second avenue involved Treasury drawing on submissions and testimonies from industry and investor stakeholders from the Senate Select Committee on Financial Technology and Regulatory Technology.⁶ The Committee sought feedback on removing regulatory barriers arising from a lack of technology neutrality. Some submitters to the inquiry used the opportunity to comment on the effectiveness of the temporary measures and the possibility of them being made permanent. Comments relevant to the permanent reforms made in the submissions were considered by Treasury in developing the permanent reforms.

There were six relevant submissions⁷, and eight witnesses at hearings⁸, which provided relevant testimonies in respect of these reforms. The Committee released its first interim report in September 2020 which included three relevant recommendations: (1) that companies communicate with members electronically by default with members to receive paper-based communication on an opt-in basis; (2) electronic execution and (3) witnessing of documents be allowed.

⁶ The terms of reference of this that the Committee requires them to consider opportunities for the RegTech industry to strengthen compliance but reduce costs. In the Issues Paper released on 23 October 2019, the Committee sought feedback on removing regulatory barriers arising from a lack of technology neutrality. Following the Coronavirus outbreak, the Committee re-opened its call for submissions to the inquiry to enable submitters to provide further input to the Committee. It conducted a number of public hearings between 30 June 2020 and 10 August 2020. The Committee released a second interim report in April 2021 which examined further issues in the RegTech industry. However, no additional recommendations in relation electronic communication and meetings were made.

⁷ These were from: Australasian Investor Relations Association (AIRA), Australian Institute of Company Directors (AICD), Computershare, Governance Institute of Australia (GIA), Law Council of Australia (LCA) and Link Group. Submissions are available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Financial_Technology_and_Regulatory_Technology/FinancialRegulatoryTech/Submissions

⁸ These were from: Law Council of Australia (LCA) on 1 July 2020, Australian Shareholders Association (ASA) on 10 August 2020 and Australasian Investor Relations Association (AIRA), Australian Institute of Company Directors (AICD), Computershare, Governance Institute of Australia (GIA), Link Group, and AMP Limited on 30 June 2020. These transcripts are available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Financial_Technology_and_Regulatory_Technology/FinancialRegulatoryTech/Public_Hearings

Treasury consultation on exposure draft legislation

The third avenue was through public consultation on exposure draft legislation from 19 October to 6 November 2020. Treasury received over 65 submissions, as well as a large number of correspondence from retail investors. Treasury met with a range of industry and investor representative bodies. Subsequent public consultations on the exposure draft legislation were held from 25 June to 16 July 2021, during which Treasury received 34 submissions and from 30 August to 16 September 2021, during which Treasury received 27 submissions. Through each of these processes, Treasury undertook targeted consultation with a range of stakeholders on the draft legislation, and discussed other potential options for reform, including clarifying proposed savings and costs to companies.

Treasury consultation on improving technology neutrality

The fourth avenue was through public consultation on the Improving the Technology Neutrality of Treasury Portfolio Laws as part of the Deregulation Taskforce's modernising business communications agenda. As part of this consultation process, Treasury held targeted meetings to seek stakeholder views on areas of business communication requiring reforms and to raise awareness of the Government's technology neutral reform agenda and public consultation process. On 18 December 2020, the Government released a public consultation paper, which was open for 10 weeks and closed on 28 February 2021. On 21 April 2021, the Government announced other reforms following this consultation, that will be progressed through a separate legislative process.

This experience simultaneously allowed the Government to obtain feedback on the reforms both by having an unprecedented opportunity to observe the actual operation of reforms, as well as through stakeholder feedback. This feedback, from industry and investor representative groups, has helped the Government determine the permanent reforms that should be made with respect to document execution and meeting-related materials.

5.1 Summary of feedback

There was overwhelming support from industry representatives, including listed companies, share registries, business associations and legal professionals to make the temporary reforms permanent. Relevant stakeholders included the Australian Institute of Company Directors (AICD), Australian Banking Association (ABA), the Law Council of Australia, the Governance Institute of Australia (GIA), Business Council of Australia (BCA) and Australasian Investor Relations Association (AIRA).

In their submissions to the consultation on the exposure draft legislation, industry continued to express their support for permanent reforms. They noted that there were substantial savings and greater engagement with members. Their primary comments suggested where reforms could further reduce regulatory burden in respect of both document execution and meeting-related materials.

While the document execution reforms were not relevant to members, members were generally supportive of the reforms with respect to meeting-related materials. However, consistent with the recommendations of the first interim report of the Senate Select Committee on Financial Technology and Regulatory Technology, they sought amendments which would require companies to provide hard copies, rather than electronic communications, where members have elected to receive hard copies.

Incorporation of feedback into Option 3

Option 3 takes on board stakeholder feedback to make modifications to the temporary reforms. In respect of document execution, Option 3 took on board suggestions from industry that the final legislation:

- clarify that companies and their officers (including company agents) will be able to create and sign deeds, as well as other documents, electronically;
- allow documents to be validly executed in technology neutral and flexible manners by permitting persons to sign documents using a mixture of electronic and wet-ink methods and not requiring all signatories to sign the same copy of a document;
- allow a person who is signing a document in multiple different capacities to sign once in multiple different capacities;
- allow the use of technology to execute documents with a common seal electronically, including by allowing witnesses to validly witness the fixing of a company seal electronically;
- ensure that deeds do not need to be signed on paper, parchment or vellum to be executed and remove the common law requirement of formal delivery; and
- ensure that ASIC or a Registrar cannot refuse to receive or register a document that is signed in accordance with the technology neutral signing provisions.

The reforms will allow company agents to execute a deed without a witness. Traditionally witnessing the execution of a deed in this way would require physical signing and witnessing of the document. The requirement has been removed to facilitate technology neutral signing and was informed by consultation with stakeholders. Stakeholders stated that the witnessing requirement provided little, if any, certainty about the execution of the document as any person may be a witness (they do not have to be known to the party) and there are no requirements for the witness to know the signer or satisfy themselves as to the signer's identity.

The legislation includes reforms that expands the statutory validation for the execution of company documents to cover circumstances where these documents are executed by directors and company secretaries, as well as sole directors who are also the company secretary.

Following feedback through consultation, various technical drafting changes were made to ensure that the legislation operated as intended.

With respect to meeting-related materials, Option 3 incorporated feedback to:

- allow companies to choose whether to satisfy their obligations to provide documents to recipients by providing hard copy documents or by using electronic means unless a member makes an election to receive documents in a certain manner;
- allow companies to send documents in five ways: in hard copy; electronically; physically with access to information electronically (e.g., physical postcard); electronically, with access to information electronically (e.g., electronic postcard); or by posting the information on a website, if the document is an annual report or otherwise permitted by the regulations;
- expand the scope of documents that companies may send in one of those five ways to include all documents sent by a company related to meetings to anyone, not just to members;
- provide companies with a period of 30 days to comply with a new member election to receive documents in hard copy;
- allow members the flexibility to elect to receive documents in a particular format on a once off basis;
- require public companies and registered schemes to notify members of their election rights by either providing a notice once a year, or by publishing that information on a website; and
- consistent with members' current rights to elect not to receive annual reports, provide members with the option to elect not to receive annual reports or certain other documents that are prescribed by the regulations.

Option 3 includes a provision requiring a review to be undertaken that examines the effectiveness of the legislative reforms, as soon as practicable, two years after its commencement. This was reduced from five years, following consultation on the exposure draft legislation.

6. What is the best option from those you have considered?

Option 3 is the best option as it goes furthest of the three options, to achieve the Government’s objectives of ensuring that where substantive statutory requirements can be met using digital technologies, the law allows companies and their officers to do so.

Option 3 incorporates drafting techniques which will enable the Government to more easily expand the scope of these reforms to apply more broadly to requirements to sign and send documents across the Act. These further changes are changes being considered and consulted on as part of the Modernising Business Communications project and has the potential to further reduce regulatory burden on companies.

6.1 Document execution

Option 3 goes the furthest in terms of ensuring that substantive statutory requirements that companies must meet for counterparties to rely on the statutory presumption, can be met electronically. It provides greater flexibility and surety that documents can be executed in a technology neutral manner and expands the scope as to who can execute and what documents can be executed. The scope and flexibility to execute documents is limited under Options 1 and 2. Specifically, the main differences between Options 2 and 3 are as follows:

Option 2	Option 3
Company documents can be executed with and without a seal electronically. Company agents can only make documents.	Clarifies that companies and their officers (including company agents) will be able to create and sign documents including deeds, electronically.
The fixing of a company seal can be witnessed electronically.	The fixing of a common seal can be witnessed electronically but must satisfy technology neutral signing provisions.
A copy or counterpart of a document can be signed electronically and must include the entire contents of the document but does not need to include others’ signatures.	Allows documents to be validly executed in technology neutral and flexible manners and does not require: <ul style="list-style-type: none"> - persons to sign the same form of document - persons to sign the same page of the document - persons to use the same method of signing - the signed document to include all the contents of the document.
Unclear whether deeds have to be signed on paper, parchment or vellum.	Ensures that deeds do not need to be signed on paper, parchment or vellum to be executed and removes the common law requirement of formal delivery.
No equivalent provision.	Company agents can execute a deed without a witness.

ASIC cannot refuse to receive or register the document on the basis that the document has been not been signed, if it has been signed in accordance with electronic signing provisions.	ASIC or a Registrar cannot refuse to receive or register a document that is signed in accordance with the technology neutral signature provisions.
Documents can be signed electronically by company directors and company secretaries.	Expands the statutory validation for the execution of company documents to cover circumstances where these documents are executed by directors and company secretaries, as well as sole directors who are also the company secretary.

6.2 Meeting-related materials

In terms of meeting-related materials, Option 3 goes the furthest in terms of ensuring that the same substantive statutory requirements are met, while providing companies and members as much flexibility to use technology as possible. The comparison between Options 2 and 3 are as follows:

Option 2	Option 3
Documents relating to a meeting may be given electronically, in hard copy or through information in a postcard.	Allows companies to send documents relating to a meeting in five ways: in hard copy; electronically; physically with access to information electronically (e.g., physical postcard); electronically, with access to information electronically (e.g., electronic postcard); or by posting the information on a website, if the document is an annual report or otherwise permitted by the regulations.
Members have the right to opt-in to receive documents in hard copy.	Allows companies to choose whether to satisfy their obligations to provide documents to recipients by providing hard copy documents or by using electronic means unless a member makes an election to receive documents in a certain manner.
	Allows members the flexibility to elect to receive documents in a particular format on a once-off basis.
Documents relating to a meeting may be signed electronically.	Documents relating to a meeting may be signed electronically.
Meeting minutes may be recoded, kept and provided electronically.	Meeting minutes may be recoded, kept and provided electronically.
Requires companies and registered schemes to notify members of their rights to make an election within two months of the person becoming a member	Requires public companies and registered schemes to notify members of their election rights either once a year (through the notice of meeting), or by publishing on a website in relation to meeting-related materials.
Requires companies and registered schemes to notify the annual report is accessible on a website or in writing.	Requires companies and registered schemes to notify the annual report is accessible on a website or in writing.
Documents can be sent from company to member, member to company and between companies and auditors.	Expands the scope of documents to include all documents sent by a company related to meetings to anyone, not just to members.
Can elect not to receive annual reports.	Provides members with the option to elect not to receive annual reports or certain other documents, that are prescribed by the regulations.

Requires companies to provide hard copies within 10 business days.

Provides companies with a period of 30 days to comply with a new member election to receive documents in hard copy.

6.3 Overall regulatory savings

Overall, Option 3 has the highest regulatory saving of \$450 million on average per year over 10 years. The regulatory costs of requiring companies to provide hard copies of meeting-related materials to members who ask for this information are relatively small, with the regulatory saving attributable to being able to keep, retain, provide and sign meeting-related materials under Options 2 and 3 both being \$20 million. The small additional costs from providing access to hard copies on request should be considered against the benefits of improving access to meeting materials for people with limited access to technology. Overall, these provisions will allow companies greater flexibility to use technology to satisfy regulatory requirements and save associated costs.

Regulatory burden estimate (RBE) table

Average annual regulatory costs (Option 2)				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	-\$412	\$0	-\$412
Average annual regulatory costs (Option 3)				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	-\$450	\$0	-\$450

7. How will you implement and evaluate your chosen option?

The proposed legislation makes permanent changes to the Act to implement these reforms. The legislation includes a review clause, which requires the Government to evaluate the operation of the legislation as soon as practicable, two years after it commences, to determine whether the reforms are operating as intended.

Option 3 includes a legislative review that will provide the opportunity to assess the effectiveness of these reforms and to determine whether they are operating as intended.

Additional Information / Summary

RIS status at each major decision point

On 27 August 2020, a decision to consult on the permanent reforms was informed by a RIS (reference: 42722 & 42724) which was provided to the Office of Best Practice Regulation for early assessment. As a result of the outcomes of consultation, a decision was made on 23 June 2021 to update the RIS and undertake additional consultation.