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Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

Email: businesscomms@treasury.gov.au

Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments

The Property Council welcomes the opportunity to provide comments on the exposure draft of new legislation to facilitate electronic signing and the holding of hybrid meetings, *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments* (Bill).

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

The Property Council welcomes the Government's concentrated efforts to modernise business, particularly noting the work of the Deregulation Taskforce and the Digital Business Plan. We were pleased to see many of the suggestions in our submission to the *Modernising Business Communications* consultation acted on, and we have engaged throughout the consultation process on *Treasury Laws Amendment (2021 Measures No.1) 2021 Bill* (TLAB No.1) to express our support for the Government's business modernisation agenda.

In our below comments we suggest changes to the Bill that allow for true technology neutrality. We also seek to ensure that the best interests of both a company and its shareholders are represented. Specifically, the major amendments we seek include:

- Expressly allow virtual meetings in *The Corporations Act*
- Companies able to choose the method for shareholder questions
- Ensure deeds can be executed electronically
- Extend electronic signatures to foreign companies

Urgent need for reform

We welcome the narrower focus of this Bill which we hope will expedite its adoption in time for the main 2021 annual general meeting (AGM) season. We urge the Government to seek a timely passing of the Bill, particularly as ASIC's relevant no-action position will cease on 31 October 2021. The present disruptions caused by the recent COVID-19 outbreaks demonstrate the urgent need for technology neutral business measures related to meetings and document execution.

The Present Bill

We congratulate the Government on introducing the present Bill which builds on TLAB No.1 and will enable companies to sign documents electronically, as well as send meeting-related materials and hold meetings with the use of technology. Importantly, we welcome the permanent nature of these reforms.

The Corporations Act sets out various obligations for organisations to execute documents, hold meetings, and provide meeting-related documents which do not reflect new technologies that have made this quicker and easier to do. The COVID-19 pandemic has highlighted the importance of technology in enabling companies to meet regulatory requirements and maintain effective communications with their shareholders where they cannot physically sign documents or hold face to face meetings.

Even in a non-COVID environment, companies are incurring significant costs related to document execution and meeting-related document requirements that are paper-based and unnecessary and we welcome the measures in this Bill to legislate a technology neutral approach.

Holding of meetings

Provide companies with the right to hold virtual meetings

Companies have adapted to the COVID-19 situation through reconsideration of the AGM format, and the experience through 2020 showed that virtual AGMs can offer a means of improving access for shareholders. The virtual format neutralised existing problems with attendance at in person meetings, increasing the number of shareholders who could attend an AGM without having to travel. In a modern technology linked society, shareholders across Australia, and overseas, can attend a virtual meeting, exponentially lifting the number of attendees and increasing engagement between shareholders, directors and management.

Virtual meetings offer a superior format than the Bill's endorsed hybrid meeting. From a company's perspective, hybrid meetings are inefficient, involving the duplication of resources in the hiring of venues, catering, security and technical support. For shareholders, there is the risk of unequal treatment and the perception that the physical audience will have greater access and favoured status over virtual attendees.

Proposed sections 249R and 252P enable companies and registered schemes to hold wholly virtual meetings only "if this is required or permitted by the company/scheme's constitution". This restriction should be removed and the right to hold virtual meetings should be expressly allowed in *The Corporations Act* to modernise business in line with the available technology, to allow wide access for shareholders and to give companies the flexibility to determine the most appropriate approach for their circumstances. We note that only a small proportion of most companies' members typically physically attend meetings. The default position of hybrid meetings appears to disregard this fact and *The Corporations Act* principles in relation to the reasonable opportunity of members to ask questions or make comments at the meeting.

Provide companies with the flexibility to determine method for asking of questions

The Bill does not contain requirements around the format of the meeting or how voting should take place – we understand that this means companies will not be required to facilitate online voice questions at meetings, particularly AGMs, as shareholders can exercise their right to speak either by voice OR in written form. We support this approach as it allows flexibility and removes potentially redundant methods of communication as technology evolves.

However, the proposed sections 249S(8) and 252Q(8) in the Bill could suggest that shareholders have the right to ask questions either in writing or orally. Asking questions is a vital aspect of allowing shareholders to participate in a meeting, however the ambiguity in the drafting has the potential to confuse. To provide avenues for asking questions both in writing and orally places burdensome obligations on companies and ultimately does not improve the present situation. In effect, the costs of resourcing both avenues ultimately creates less value for shareholders, without a clear efficiency or additional benefit.

Additional clarity should be provided that a company will satisfy their obligation to give members a reasonable opportunity to participate if shareholders can ask questions in writing OR orally at the meeting, but are not required to provide both.

Valid document execution requirements

We welcome the addition of allowing company officers to execute deeds electronically, and for documents to be validly executed via remote witnessing and with electronic signatures.

However, we are aware that this topic has been an area of contention and confusion for some parties in the previous Bills. We urge the Government to ensure that if there is any confusion from other submissions about the inclusion of deeds that this be clarified.

Meeting-related document requirements

Currently, companies must post meeting-related materials where shareholders have not consented to receiving documents electronically, resulting in significant unnecessary business costs.

In our submission on TLAB No.1, we expressed concerns with the requirement for companies to give shareholders a one-off notification regarding their right to receive hard copy notices. This was somewhat antithetical to the broad intent of TLAB No.1 and the Digital Business Plan aims.

We welcome the approach in the present Bill to give a document electronically where the individual receiving the document has not opted in for hard copy.

Foreign and statutory corporations

We note the provisions of the Bill deal with companies, and do not extend to foreign and statutory corporations. Extending electronic signing of documents (including deeds) to these bodies would be a welcome additional step.

If you would like to discuss any aspect of this submission further, please contact Adele Lausberg on 0415 225 638 and alausberg@propertycouncil.com.au, or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely



Belinda Ngo
Executive Director, Capital Markets