
CORPORATIONS AMENDMENT (VIRTUAL MEETINGS AND ELECTRONIC COMMUNICATIONS)
BILL 2020

EXPOSURE DRAFT EXPLANATORY MATERIALS

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Corporations Act	<i>Corporations Act 2001</i>
The Determinations	<i>Corporations (Coronavirus Economic Response Determination (No. 1) 2020 and Corporations (Coronavirus Economic Response Determination (No. 3) 2020</i>
Determination No. 3	<i>Corporations (Coronavirus Economic Response Determination (No. 3) 2020</i>
ETA 1999	<i>Electronic Transactions Act 1999</i>

Chapter 1

Virtual meetings and electronic communication

Outline of chapter

1.1 Schedule 1 to the Bill allows companies to execute documents, hold meetings, provide notices relating to meetings and keep minutes using electronic means or other alternative technologies. It makes permanent, and expands upon, the changes in the *Corporations (Coronavirus Economic Response) Determination (No.3) 2020* (Determination No. 3).

Context of amendments

1.2 The *Electronic Transactions Act 1999* (ETA 1999), which facilitates the use of electronic transactions, does not apply to the *Corporations Act 2001* (Corporations Act) or instruments made under that Act (section 6 and item 23 of the Schedule 1 to the *Electronic Transaction Regulations 2020*). As a result, company documents must be executed by all parties physically signing the same static document and there are constraints on companies' ability to conduct meetings using alternative technologies.

1.3 During the Coronavirus outbreak, the temporary power in section 1362A of the Corporations Act was used to make temporary modifications to allow meetings to be held and documents to be executed using electronic means (see the *Corporations (Coronavirus Economic Response) Determination (No.1) 2020* and Determination No. 3).

1.4 Companies have embraced the use of electronic means and alternative technologies to hold meetings and execute company document. The use of these technologies has resulted in regulatory savings for industry and increased productivity. There is now an opportunity to permanently modernise the relevant provisions in the Corporations Act in a way that preserves members' rights to participate.

Summary of new law

1.5 Schedule 1 of the Bill allows electronic means or alternative technologies to be used to:

- execute company documents;
- hold meetings of directors of a company, meetings of shareholders of a company (including Annual General Meetings) and meetings of members of a registered scheme;
- execute documents relating to meetings;
- record, keep and provide minutes; and
- provide notice of a meeting and give other documents relating to meetings to the prospective attendees.

1.6 These amendments make permanent, and expand upon, the changes in Determination No. 3.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Company documents executed both with and without a seal may be executed using electronic means. If the document is executed by affixing a company seal, electronic means may be used to witness the fixing of the seal.	To execute a company document, all persons must physically sign the same hard copy. Temporary relief from this requirement for document executed without a company seal was granted in Determination No. 3.
Directors meetings, meetings of shareholders of a company and meetings of members of a registered scheme may be held using electronic means provided that all persons have a reasonable opportunity to participate. If electronic means are used to hold the meeting, the notice of the meeting must include sufficient information to allow all attendees to participate and votes must be taken on a poll.	Meetings must generally be held at a physical location. Temporary relief from this requirement was granted in Determination No. 3.
Documents relating to a meeting may be given electronically if it is reasonable to expect that the document would be readily accessible so as to be usable for subsequent reference at the time that it is given.	Documents relating to a meeting must be posted unless the member has agreed to the document being sent via email or fax and the specific requirements in the Corporations Act are met. Some documents may only be provided via post.

<p>The document must either be sent to the electronic address provided by the member or another electronic address that the sender believes on reasonable grounds to be the person's electronic address. Alternatively, the sender could provide the person with details sufficient to allow them to view or download the document (either electronically or via traditional means).</p>	<p>Temporary relief from this requirement was granted in Determination No. 3.</p>
<p>Documents relating to a meeting may be signed electronically by using a method to identify the signatory and indicate the signatory's intention.</p>	<p>Documents relating to a meeting must generally be signed in hard copy.</p> <p>Temporary relief from this requirement was granted in Determination No. 3.</p>
<p>The minutes for meetings of shareholders and members of registered schemes may be taken electronically and the minute book may be provided to shareholders and members and kept electronically.</p>	<p>In general, minutes must be kept in hard copy.</p>
<p>The minutes for virtual meetings of shareholders and members of registered schemes must include any questions or comments submitted by a shareholder or member (before or during the meeting).</p>	<p>No equivalent.</p>

Detailed explanation of new law

Definition of key terms

1.7 The new law inserts the definition of *electronic communication* that is used in the ETA. An 'electronic communication' is defined to mean a communication of information in the form of data, text, images or speech by means of electromagnetic energy. If the information is in the form of speech, the speech must be processed at its destination by an automated voice recognition system. [Schedule 1, item 39, definition of 'electronic communication' in section 9 of the Corporations Act]

1.8 The definition of 'electronic communication' in the ETA is designed to address situations where *documents* are given, provided,

produced, recorded and retained electronically. It does not cover situations where persons are using alternative technology to communicate orally with each other in real-time. Therefore, a new defined term, **virtual meeting technology**, is inserted to cover any technology that allows a person to participate in a meeting without being physically present. *[Schedule 1, item 39, definition of ‘virtual meeting technology’ in section 9 of the Corporations Act]*

1.9 A new definition of **document** is also inserted to ensure that the reforms apply to all information, including information that is not in a paper or material form. The new definition mirrors the definition of ‘document’ in the current version of the *Acts Interpretation Act 2001*. *[Schedule 1, item 39, definition of ‘document’ in section 9 of the Corporations Act]*

Execution of company documents

1.10 Amendments have been made to make the laws relating to the execution of company documents technology neutral and allow companies to execute company documents electronically. These changes apply to documents executed without a common seal, documents executed with a common seal and deeds.

1.11 In situations where the signature of more than one director or secretary is required, the relevant persons may sign different copies or counterparts of the document, provided that the copy or counterpart includes the entire contents of the original document. This reverses the effect of the court’s decision in *Adelaide Bank v Pickard* [2019] SASC 13 where it was held that all persons needed to sign the same single, static document. *[Schedule 1, item 5, subsections 127(3A) and (3C) of the Corporations Act]*

1.12 Further, the director or secretary may receive and sign an electronic copy of the document if three conditions are satisfied. First, the copy must include the entire contents of the document. *[Schedule 1, item 5, paragraphs 127(3B)(a) and (b) of the Corporations Act]*

1.13 Second, the person must indicate, by means of an electronic communication, that the person has signed the document. An example of this might be sending an electronically-signed document in an email with the covering message, ‘Please find attached my signed document’. *[Schedule 1, item 5, paragraph 127(3B)(c) of the Corporations Act]*

1.14 Third, the person must identify themselves and indicate their intention using a method that is as reliable as appropriate for the purposes for which the company is executing the document or proven in fact to have indicated the person’s identity and intention. This condition is modelled on the conditions for electronically signing a document in section 10 of the ETA 1999 and should apply in the same way as in that Act. *[Schedule 1, item 5, paragraphs 127(3B)(d) and (e)]*

1.15 There are two other conditions in section 10 of the ETA 1999 that do not apply to the execution of company documents. Those conditions require the recipient to consent to the use of electronic communication and comply with any requirements of the Commonwealth agency that is receiving the information. These conditions are not included as they impose high regulatory costs on companies and are significantly more restrictive than the relief provided by Determination No. 3.

1.16 If the company executes the document by fixing a common seal, the persons witnessing the fixing of the seal may do so remotely. They may do this by:

- using electronic means (such as videoconferencing) to observe the fixing of the seal;
- signing the document (either physically or electronically); and
- annotating the document with a statement stating that they have observed the fixing of the seal by using electronic means.

[Schedule 1, item 3, subsection 127(2A) of the Corporations Act]

1.17 These changes expand upon the relief provided by Determination No. 3 and ensure that the rules relating to the execution of company documents using a common seal are not more restrictive than the rules relating to the execution of company documents without a common seal.

Virtual meetings

1.18 Meetings may be held using ‘virtual meeting technology’ if all persons entitled to attend the meeting have a reasonable opportunity to participate. *[Schedule 1, item 37, subsection 253Q(1)]*

1.19 This means that meetings may now be held by:

- using virtual meeting technology;
- inviting persons to physically attend at a designated location;
- inviting persons to physically attend at different locations and using virtual meeting technology to connect the different locations together; or
- using a combination of the above methods (hybrid meetings).

Types of meetings that may be held virtually

1.20 The new rules apply to meetings of:

- shareholders of companies (including Annual General Meetings);
- directors of companies; and
- members of registered schemes.

[Schedule 1, item 37, section 253P]

1.21 Similar amendments are proposed in Schedule 4 of the Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 to facilitate the use of virtual meeting technology to hold all meetings that are conducted in the context of external administration, including meetings of creditors and committees of inspection.

Place and time of a virtual meeting

1.22 For a meeting where all of the participants attend using electronic communication, the place of the meeting is taken to be the address of the registered office of the company or responsible entity of a registered scheme. The time for the meeting is the time at the address of the registered office. *[Schedule 1, item 37, subsection 253R(3) of the Corporations Act]*

1.23 If a meeting is a hybrid meeting where some members physically attend and others attend using virtual meeting technology, the place and time for the meeting are taken to be the place where the members physically attend and the time at that location. If there are two or more such locations, the place of the meeting is the main location (as set out in the notice for the meeting) and the time of the meeting is the time at the primary location. This ensures that there is only one place and time for the meeting. *[Schedule 1, item 37, subsection 253R(2) of the Corporations Act]*

1.24 The meeting must be held at a time that is reasonable at the place where the meeting is taken to be held. It may not necessarily be a convenient time for all of the shareholders or members who are attending using technology, in the same way that face to face meetings may be held at a time that is not convenient for all shareholders or members. *[Schedule 1, items 14 and 31, subsections 249R(1), 249R(2), 252P(1) and 252P(2) of the Corporations Act]*

Content of notices of virtual meetings

1.25 When a meeting is to be held using technology, the notice of the meeting must include sufficient information to allow the persons entitled to attend the meeting to participate using the virtual meeting technology. This information could consist of dial in details or a link to the relevant website. The notice must also designate the main location for the meeting if there are two or more physical locations, such as in a situation where the company directors are physically meeting in Sydney and physical venues in Melbourne and Perth are also made available to shareholders to

join the AGM virtually. This rule also applies to a meeting that is adjourned because there is not a quorum present within 30 minutes of the time set out for the meeting in its notice. [*Schedule 1, items 13, 16 and 29, paragraphs 249L(1)(a), subsection 249T(3A) and paragraph 252J(a) of the Corporations Act*]

1.26 The meeting notice for a meeting that is to be held using technology must also include sufficient information to allow members to provide proxy documents by electronic means. [*Schedule 1, item 21, subsection 250BA(1) of the Corporations Act*]

Conduct of virtual meetings

1.27 If a meeting is conducted virtually, all persons participating in the meeting (whether by being physically present or using electronic means) are taken to be ‘present’. This means that all of those persons should be counted for the purposes of determining whether there is a quorum. [*Schedule 1, item 37, subsection 253Q(2) of the Corporations Act*]

1.28 The method of voting at a virtual meeting of shareholders or members (or a hybrid meeting) also differs from a meeting where all persons are physically attending. At a virtual meeting of shareholders, votes must be taken on a poll rather than a show of hands. [*Schedule 1, items 22, 23, 24, 35 and 37, paragraph 250BB(1)(b) and subsections 250J(1), 250K(4), 253J(2) and 253Q(3) of the Corporations Act*]

1.29 Also, all participants who are entitled to vote must be given the opportunity to elect to either vote in real time or, if it is practicable for the company, in advance of the meeting. It is not expected that companies would provide a method for voting in advance of the meeting for director’s meetings. [*Schedule 1, item 37, subsection 253Q(4) of the Corporations Act*]

1.30 Documents may be tabled at a virtual meeting by giving the document to all persons entitled to attend the meeting before or at the meeting. [*Schedule 1, item 37, subsection 253Q(5) of the Corporations Act*]

Electronic communication of documents relating to meetings

1.31 Documents relating to meetings may be given or signed using electronic means. This applies regardless of whether the meeting is held using electronic technology or in person.

Types of documents that may be given or signed electronically

1.32 There are seven types of documents that are covered by the new rules.

1.33 First, the rules cover documents in which a person makes a request in relation to a meeting. This includes putting forward a member’s resolution or a member’s statement for consideration at the meeting (e.g.,

under sections 249N or 252L). [*Schedule 1, item 37, subparagraph 253S(1)(a)(i) of the Corporations Act*]

1.34 Second, notices of meetings may be provided electronically. This covers notices provided under section 248C (directors' meetings), sections 249J and 249K (shareholders' meetings) and section 252G (meetings of members of a registered schemer). [*Schedule 1, item 37, subparagraph 253S(1)(a)(ii) of the Corporations Act*]

1.35 Third, notices of a resolution or a record of a resolution may be provided and signed electronically. [*Schedule 1, item 37, subparagraph 253S(1)(a)(iii) of the Corporations Act*]

1.36 Fourth, notices of a statement in relation to a meeting or a matter to be considered at a meeting may be provided and signed electronically. An example of a notice covered by this category is a members' statement distributed under sections 249P or 252N. [*Schedule 1, item 37, subparagraph 253S(1)(a)(iv) of the Corporations Act*]

1.37 Fifth, the new rules cover documents relating to a proxy, such as a document to appoint a proxy (provided under sections 250B or 252Z) or a list of persons who are willing to act as a proxy (provided under sections 249Z or 252X). [*Schedule 1, item 37, subparagraph 253S(1)(a)(v) of the Corporations Act*]

1.38 Sixth, questions for auditors and responses to those questions (including under sections 250PA or 250T) may be provided electronically. [*Schedule 1, item 37, subparagraph 253S(1)(a)(vi) of the Corporations Act*]

1.39 Seventh, the new rules apply to giving and signing minute books including under existing subsections 251A(2)-(4) and 253M(2) (signing minutes) and subsections 251B(3)-(4) and 253N(3)-(4) (providing copies of minutes). [*Schedule 1, item 37, subparagraph 253S(1)(a)(vii) of the Corporations Act*]

1.40 Finally, the new rules apply to resolutions made without a meeting and all documents that relate to the making of those resolutions as per Division 1 of Part 2G.1 (for directors' resolutions and declaration) or Division 1 of Part 2G.2 (for resolutions of proprietary companies). [*Schedule 1, item 37, paragraphs 253S(1)(b) and 253S(1)(c) of the Corporations Act*]

How to give a document using electronic means

1.41 A document may be provided electronically either by:

- giving the document to the person by using electronic means (e.g., sending an email); or
- using electronic or traditional means to provide the person with details sufficient to allow them to view or download the document electronically (e.g., by giving them a card or sending them an email with a link to a website).

[Schedule 1, item 37, subsections 253S(2) and (3) of the Corporations Act]

When a document may be given electronically

1.42 There are two conditions that must be satisfied before a document can be given electronically.

1.43 First, it must be reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference at the time that the document is given. This replicates the condition in paragraph 9(1)(a) of the ETA 1999 which relates to when electronic communications can be used to give information in writing. *[Schedule 1, item 37, paragraph 253S(4)(a) of the Corporations Act]*

1.44 The person providing the document does not need to satisfy the other conditions in section 9 of the ETA 1999. Those conditions require the recipient to consent to the use of electronic communication and comply with any requirements of the Commonwealth agency that is receiving the information. These conditions are not included as they impose high regulatory costs on companies and are more restrictive than the relief provided by Determination No. 3.

1.45 Second, the sender must have a ***nominated electronic address*** for the recipient. *[Schedule 1, item #, definition of ‘nominated electronic address’ in section 9 of the Corporations Act]*

1.46 The ‘nominated electronic address’ is the most recent electronic address provided by the shareholder or member for the purposes of receiving electronic communications unless the person sending the document knows, or there are reasonable grounds to believe, that the electronic address is not the correct address. For instance, a company may know that an email address is incorrect if they attempt to email a document to a member but receive an error message stating that the email was undeliverable. *[Schedule 1, item 39, definition of ‘nominated electronic address’ in section 9 of the Corporations Act]*

1.47 If no electronic address has been nominated or the sender knows or has reasonable grounds to believe that the nominated address is incorrect, the sender may use an electronic address that he or she believes on reasonable grounds to be the person’s recent electronic address. This address is also considered to be a ‘nominated electronic address’. *[Schedule 1, item 39, definition of ‘nominated electronic address’ in section 9 of the Corporations Act]*

1.48 The new rules do not alter the process for lodging documents with ASIC. *[Schedule 1, item 37, paragraph 253S(7) of the Corporations Act]*

Time of receipt and dispatch

1.49 There are also new default rules for determining when an electronic communication is sent and received. These rules can be

overridden by agreement of the parties. These rules also affect the meaning of the words ‘receive’ and ‘sent’. *[Schedule 1, items 39 and 40, the definitions of ‘sent’ and ‘received’ in section 9, and subsection 105A(1) of the Corporations Act]*

1.50 The time of receipt and dispatch needs to be capable of being reliably determined as many requirements in the Corporations Act need to be undertaken within a prescribed time period. For instance, notices of meetings must be given 28 days before the meeting (see, eg, section 249HA). Under the common law of contracts, the time of receipt of an electronic communication will also determine when an offer has been communicated to the other party and therefore when the contract was formed.

1.51 The default rule for determining when an electronic communication is sent depends on whether the communication leaves the information system that is under the control of the originator (or the party who sent it on behalf of the originator).

- If the communication leaves a person’s information system (which is generally the case when correspondence is sent from a company to a shareholder or a registered scheme to a member), it is sent at the time that the communication leaves the originator’s information system rather than the time when it enters the recipient’s information system.
- If the communication does not leave a person’s information system (for example, for correspondence sent within the company), the electronic communication is sent at the time that it is received by the addressee.

[Schedule 1, item 40, subsection 105A(2) of the Corporations Act]

1.52 An electronic communication is received when the electronic communication becomes capable of being retrieved by the addressee at the addressee’s ‘nominated electronic address’. *[Schedule 1, item 40, subsections 105A(4) and (5) of the Corporations Act]*

1.53 These rules apply even if the place where the information system supporting an electronic address is located is different from the place where the electronic communication is taken to have been sent or received. *[Schedule 1, item 40, subsections 105A(3) and (6) of the Corporations Act]*

1.54 The default rules for determining the time of dispatch and receipt are closely based on the rules in section 12A of the ETA. The only exception is that the ETA requires the addressee to have become aware that the electronic communication has been sent. This more nuanced approach is not adopted as it would be administratively difficult for a company if notices of meetings were taken to have been received by different members at different times and the time of receipt could not be reliably determined in advance.

Place of receipt and dispatch

1.55 The default place of receipt for correspondence sent to a member and the default place of dispatch for correspondence sent by a member is the address contained on the register of members of the company or registered scheme. The law already requires the register of members to include an address for each shareholder or member under section 169. *[Schedule 1, item 40, subsections 105B(2) and (3) of the Corporations Act]*

1.56 If the sender is the company or registered scheme that is corresponding with its members or receiving correspondence from its members, the default place of receipt and dispatch is the place where the company or registered scheme has its registered office. All companies and responsible entities of registered scheme (which are public companies) are required to have registered offices under section 142 of the Corporations Act. *[Schedule 1, item 40, subsections 105B(2) and (3) of the Corporations Act]*

1.57 The parties have the flexibility to agree an alternative electronic address. *[Schedule 1, item 40, subsection 105B(1) of the Corporations Act]*

Signing a document using electronic communication

1.58 A document relating to a meeting may be signed electronically by using a method to identify the signatory and indicate the signatory's intention. Refer to paragraphs 1.32 to 1.40 for examples of the documents to which this new rule applies. *[Schedule 1, item 37, subsection 253S(5) of the Corporations Act]*

1.59 Akin to the new rules that apply to documents executed by a company, it is not necessary for all signatories to sign the same document. *[Schedule 1, item 37, subsection 253S(6) of the Corporations Act]*

1.60 The method used to sign the document must satisfy the conditions in paragraphs 10(1)(a) and (b) of the ETA, that is, it must be:

- as reliable as appropriate for the purpose of the communication; and
- proven in fact to have identified the signatory and their intention (by itself or together with further evidence).

[Schedule 1, item 37, paragraph 253S(5)(e) of the Corporations Act]

1.61 Again, the conditions in section 10 of the ETA relating to consent and compliance with the requirements of a Commonwealth authority were not imported into the new law as they would have increased the regulatory costs on companies (refer to paragraph 1.15).

1.62 Documents lodged with ASIC may also be signed electronically. In situations where ASIC is required to make the document publicly

available, the person may wish to remove any personal identifiers (such as their ISPN). *[Schedule 1, item 37, subsection 253S(8) of the Corporations Act]*

Minute books

Electronic recording and storage of minute books

1.63 Information may be recorded electronically in a minute book if at the time of recording the information it is reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference. *[Schedule 1, item 37, subsection 253T(1) of the Corporations Act]*

1.64 The minute book may also be kept electronically if the method used to keep the minute book provides a reliable means of assuring the maintenance of the integrity of the information and it was, at the time of generating the electronic minute book, reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference. *[Schedule 1, item 37, subsections 253T(2) and (3) of the Corporations Act]*

1.65 If the minute book is stored electronically, it must be open for inspection at the same place where a hard copy would have been required to be retained under sections 251A or 253M of the Act (generally the registered office, principal place of business or another place approved by ASIC). *[Schedule 1, item 37, paragraph 253T(2)(a) of the Corporations Act]*

1.66 These rules mirror the requirements for when information can be recorded or stored electronically in subsections 12(1) to (3) of the ETA and are intended to apply in the same way as the relevant ETA provisions.

Questions and comments must be recorded

1.67 Any questions or comments submitted by a member or a shareholder at a meeting conducted using technology must be recorded in the minutes to the meeting. Shareholders and members of registered schemes may then access these minutes under existing sections 251B and 253N. *[Schedule 1, items 25 and 36, paragraphs 251A(1)(aa) and 253M(1)(c) of the Corporations Act]*

New rules apply as mandatory rules

1.68 The new rules relating to electronic execution and virtual meetings (apart from the rules relating to time and place) apply as mandatory rules rather than replaceable rules. In other words, a company's constitution cannot displace or modify the rules.

1.69 This ensures that all companies have the power to hold meetings virtually and execute company documents electronically if they elect to do so. As the rules are facilitative in nature, they do not preclude companies from conducting meetings or executing documents using traditional means.

1.70 The mandatory nature of the rules ensures that if the company elects to use electronic communication, it must comply with the mandatory requirements. For example, meetings can only be held virtually if all persons have a reasonable opportunity to participate. This ensures that companies cannot opt out of the consumer protection safeguards by adopting a different rule in their constitution.

1.71 It is also consistent with the approach taken in the context of meetings of registered schemes, given that there are no replaceable rules that apply to registered schemes.

Review

1.72 A review of the new rules in Part 2G.5 must be undertaken to ascertain whether the new rules are operating effectively. This review must be commenced as soon as practicable after the end of five years after the new rules apply. A written report must be prepared. *[Schedule 1, item 37, section 253U of the Corporations Act]*

Consequential amendments

Amendments to the meetings rules

1.73 Existing provisions which include bespoke rules that provide for the use of electronic communication or alternative technology are repealed to ensure a single consistent approach. *[Schedule 1, items 10, 12, 15, 17, 18, 20, 21 and 32, section 248D, subsections 249J (3A) to (5), section 249S, subsections 250A(1) and (1A), subsection 250B(3), subsection 250BA(1) and section 252Q of the Corporations Act]*

1.74 Amendments are also made to provisions which set out how and when notices relating to meetings are provided to ensure that these do not preclude the giving of notices electronically and that they are not inconsistent with the default rules relating to time and place. *[Schedule 1, items 11, 12, 26 to 28, 30 and 34, sections 249J, 252G, 252J and subsections 252Z(3A) and (4) of the Corporations Act]*

1.75 Similarly, provisions relating to the automatic adjournment of meetings when a quorum is not present are amended to ensure that they operate appropriately for virtual meetings and that members are given sufficient information to allow them to participate in the adjourned virtual meeting. *[Schedule 1, items 16 and 33, sections 249T and 252R of the Corporations Act]*

1.76 Provisions governing how documents relating to meetings are to be authenticated are amended to ensure they are not inconsistent with the new rules for electronic signing of documents in relation to meetings. *[Schedule 1, item 19, paragraph 250B(1)(b) of the Corporations Act]*

1.77 Sections that require meetings to be accessible to members are amended to ensure that if the meeting is held using electronic communication, it is conducted in accordance with the standard rules. *[Schedule 1, items 14 and 31, sections 249R and 252P of the Corporations Act]*

1.78 Finally, the list of replaceable rules in section 141 is updated to reflect changes in subsection numbers due to the above amendments. *[Schedule 1, item 9, table item 22 and 22A in section 141 of the Corporations Act]*

Application and transitional provisions

1.79 The amendments to the meeting rules apply to meetings held on or after the commencement of this Schedule and any document that is required or permitted to be given on after that day. *[Schedule 1, item 38, sections 1679 and 1679A of the Corporations Act]*

1.80 Minute books may also be kept, recorded and provided to members electronically on or after the day of commencement. *[Schedule 1, item 38, section 1679B of the Corporations Act]*

1.81 The amendments to the requirements for companies to execute a document under section 127 apply from the day that the Act commences. *[Schedule 1, item 38, section 1679C]*

1.82 The rules in Determination No. 3 for holding meetings using alternative technology do not apply to any meetings or documents covered by the new rules. This ensures that there is no confusion about the rules that apply to meetings convened under Chapter 2G and documents executed under section 127. *[Schedule 1, item 38, section 1679D]*

1.83 The Bill also confirms the validity of things done under Determination No. 1 or Determination No. 3. *[Schedule 1, item 41, section 1679E]*

Chapter 2

Regulation impact statement

Background

2.1 On 5 May 2020 the Treasurer made a determination under the temporary instrument-making power that was inserted in the *Corporations Act 2001* as part of the Government’s Coronavirus economic response package. The determination temporarily allowed companies to electronically satisfy requirements related to their legal obligations concerning meetings and document execution, and supports them to continue operating while still meeting social distancing requirements imposed as a result of the continuing uncertainty caused by the Coronavirus outbreak. This relief allows companies and their officers to:

- hold entirely virtual meetings, and circulate and access meeting-related materials electronically; and
- validly execute documents electronically.

2.2 The Treasurer subsequently extended this to 21 March 2021, given the ongoing challenges posed by the Coronavirus outbreak, making it difficult for shareholders to physically gather and for companies to execute documents in person.

2.3 However, the lack of technology neutrality surrounding these *Corporations Act 2001* requirements has been a longstanding concern for companies that pre-dates the Coronavirus outbreak and creates unnecessary regulatory burden. While implementing the temporary relief was necessary to adhere to social distancing requirements, it has provided an opportunity to test with stakeholders how technology can support companies to meet their obligations in ways that meet the changing needs of their shareholders. This has provided a unique opportunity to test the reforms and receive feedback on the lived experience of how the relief has been operating in practice from stakeholders, including companies and shareholders.

2.4 The Government has elicited feedback through a number of consultative avenues. In response to this feedback the Government intends to make permanent changes, and some further refinements to the law.

What is the policy problem you are trying to solve?

2.5 Prior to the introduction of the temporary relief, companies were restricted in their ability to use different technologies to comply with the requirements related to meetings and document execution respectively found under Chapter 2G and Section 127 of the *Corporations Act 2001* and associated subordinate instruments. The rigidity of these regulatory settings prevents companies from using the most efficient technological mix to meet their regulatory obligations. This increases the cost and time needed to hold meetings and to have documents signed and does not allow companies to meet the increasing desire of some shareholders to only communicate electronically.

Meetings

2.6 Current provisions, found primarily in Chapter 2G in the *Corporations Act 2001*, prescribe requirements in respect of member and director meetings. These requirements are aimed at ensuring companies adhere to a minimum standard of corporate governance. This includes facilitating an adequate level of transparency by providing an opportunity for sound communication between the directors and shareholders of a company.

2.7 The current law requires these meetings to be held at a physical location, with or without online facilities for virtual attendance. It also requires notice of meetings and documents related to meetings to be sent in a hard copy format to those recipients who do not 'opt-in' to receive meeting materials electronically. According to Link Group, currently 52.05 per cent of shareholders across their shareholder base have actively elected to receive notice of meetings via email. For the remaining portion of shareholders, companies are required to send a paper notice of meetings, and meeting materials by post.

2.8 These requirements are expensive. The Governance Institute of Australia (GIA), Australasian Investor Relations Association (AIRA) and the Australian Institute of Company Directors (AICD) have publicly stated that the cost of holding an AGM for an ASX 200 company, to comply with regulatory requirements, can range between \$250,000 and \$1,000,000. Evidence from AIRA and the GIA suggests that the costs of printing and posting hard copy notice of meetings and meeting materials are increasing. As well as the regulatory impact, there is also an environmental impact of mailing out hard copies unnecessarily.

2.9 Furthermore, shareholders that choose to attend such meetings also incur costs and with many being dispersed geographically, this may include accommodation and transportation costs. Accordingly, it is unsurprising that shareholder attendance at AGMs is low. Global share registries, Link Group and Computershare, have indicated that in 2019, only 0.19 – 0.20 per cent of shareholders attended meetings across Australia. With such low attendance at AGMs, legislative requirements mean that companies are incurring unnecessarily large costs to hold meetings in person.

2.10 There are potentially more efficient and effective ways of facilitating transparency by providing opportunities for communications between the directors and shareholders of a company. Modifications to the *Corporations Act 2001* provisions that require meetings to have a physical location, and the physical signing and posting of meeting notices and other meeting--related material could mitigate costs, while achieving required standards of corporate governance.

Document Execution

2.11 For a company to enter into a binding contract, the contract document must be validly executed. The means of validly executing a document are outlined under Section 127 of the *Corporations Act 2001*. It provides that a company will have validly executed a document, including deeds, if it is signed by:

- two directors of a company;
- a director and secretary of a company; or
- a sole director for a proprietary company.

2.12 A company may also execute a document if the common seal of the company is fixed to the document and if it is witnessed by the aforementioned.

2.13 Both of these methods of execution require a physical paper document that the directors of both contracting parties must sign using wet ink, or affix the common seal to. Accordingly, this unnecessarily requires company officers of the contracting parties to physically meet or pay for the document to be transported in hard copy between the company officers of the contracting parties. Companies may be able to mitigate the costs associated with physically meeting and transporting documents if technological options were available.

Why is government action needed?

2.14 The objective of reform is to ensure that companies are able to use the most efficient mix of technologies to deliver on substantive corporate governance outcomes. These reforms will assist companies to more efficiently communicate with their shareholders and facilitate greater transparency between shareholders and directors.

2.15 The barriers to achieving these outcomes result from *Corporations Act 2001* requirements in respect of meetings and document execution, which prevent companies and their officers using electronic means and other alternative technologies to comply with their obligations. As the requirements are imposed via legislation, they can only be amended through Government action to amend legislation.

What policy options are you considering?

2.16 The Government has received feedback from a range of stakeholders on the temporary relief. This consultation process has informed the identification of the following options:

1. Allow the temporary relief to expire on 21 March 2021 without law reform (status quo).
2. Allow the use of technology to meet legal requirements in respect of meetings and electronic document execution.
3. Allow the use of technology to meet legal requirements in respect of meetings and document execution with enhancements.

Option 1 – Maintain the status quo

2.17 Option 1 will require companies to adhere the provisions under the *Corporations Act 2001* that were in place prior to the temporary relief.

2.18 In relation to meetings, these requirements mean that companies will have to:

- host meetings at a physical location (with or without online facilities);
- allow shareholders a reasonable opportunity to participate in meetings, including providing the opportunity to ask questions and make comments to the management;
- determine whether voting should be conducted by shareholders by a show of hands or a poll;

- exclude online meeting attendees when counting towards a quorum;
- call a physical meeting and pass a special resolution of at least 75 per cent in favour to modify their constitutions to allow the use of technology; and
- circulate the notice of meetings and documents related to meetings in a physical form, where shareholders have not elected to receive materials electronically.

2.19 In relation to document execution, this means that a company can only validly execute a document if:

- the 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.

Option 2 – Allowing the use of technology to meet legal requirements in respect of meetings and electronic document execution

2.20 Option 2 involves permanently implementing relief in respect of meetings and document execution. The temporary relief allowed companies and their officers to meet regulatory requirements in respect of meetings and the execution of company document, using electronic or other alternative technologies.

2.21 These modified regulatory requirements would mean that:

- AGMs and other meetings prescribed under the *Corporations Act 2001*, *Corporations Regulations 2001* and other subordinate instruments, could be held using technology without there being a physical location;
- technology can be used to allow shareholders a reasonable opportunity to participate in meetings, including providing the opportunity to ask questions and make comments to the management;
- notices and other information required for meetings could be circulated and accessed electronically;

- voting, a quorum and the asking of questions could be facilitated electronically; and
- if a company chose to use alternative technologies to hold a meeting, they must conduct votes using a poll, instead of a show of hands.

2.22 The temporary relief requires companies using technology to give all shareholders a reasonable opportunity to participate. The modified regulatory requirements also allow company officers to validly execute a company document without a seal, by signing it or a copy of the document electronically.

Option 3 – Allowing the use of technology to meet legal requirements in respect of meetings and document execution with enhancements

2.23 Option 3 has been developed following feedback from stakeholders who have had firsthand experience of the temporary relief. As with Option 2, it involves modifying the requirements in the *Corporations Act 2001*, *Corporations Regulations 2001* and other subordinate instruments, in respect of meetings and the execution of company documents. However, it includes a number of enhancements, which respond to issues that stakeholders have raised.

2.24 In relation to the requirements in respect of meetings, the permanent reforms will differ from the temporary relief as follows:

- to improve transparency, companies choosing to hold a meeting virtually, will be required to record and give members' access to all questions and comments submitted before or during a meeting that are intended to be covered during the meeting.
- to further reduce the need for paper copies and wet ink signatures on other documents relating to a meeting, the permanent reforms will:
 - clarify that alternative technologies may be used to execute or sign all materials related to a meeting; and
 - allow documents such as meeting minutes to be kept, retained and provided electronically.
- to cater for shareholders who are not able to access or use technology, the permanent reforms will limit companies to using technology to provide materials to shareholders, for whom they have an email address.

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

- clarify that companies and their directors will be able to create and sign deeds electronically; and
- 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.

What is the likely net benefit for each option?

Option 1 – Maintain the status quo

2.26 Feedback on the temporary measures suggests that this option is unlikely to achieve the Government’s objectives in terms of addressing the longstanding issue of lack of technological neutrality of these requirements in the *Corporations Act 2001*, and so creating unnecessary regulatory burden. Upon expiration of the temporary measures concerning meetings and document execution, companies will once again have to resort to in-person and paper-based mechanisms to satisfy regulatory requirements in respect of meetings and valid document execution.

Meetings

2.27 After the expiration of the temporary measure, companies will no longer be able to send meeting notices and materials electronically (where shareholders have not elected to receive materials electronically), or hold virtual only meetings, and must offer a physical meeting to engage with their shareholders.

Facilitating transparency

2.28 This option facilitates transparency through the provision of opportunities for communications between directors and shareholders in two ways. First, shareholders will be able to physically interact with the company and board members at AGMs. This allows shareholders to physically communicate their reactions to the board and their fellow members in way that may demand a greater response from the company and board members, than what is otherwise possible in a virtual environment. It also means that each member can obtain the individual attention of the board when asking questions verbally, rather than being read in context of simultaneous written communications made to a board prior to or during meetings. Second, this option ensures that shareholders who have limited access to technology or technological capabilities will always be able to attend AGMs.

2.29 However, maintaining the status quo is unlikely to overall facilitate greater transparency though the provision of opportunities for communications between directors and shareholders. This is because shareholders incur costs to attend meetings physically. Shareholders travel locally, and often interstate or from overseas to attend meetings, and those who are unable to travel, will not be provided the opportunity to engage with the board. Computershare, a major share registry, which manages many dealings on behalf of companies with shareholders, indicated that over 90 per cent of their interactions with shareholders are via digital channels, not telephone or mail. For the vast majority of these shareholders who have adequate access to technology and capabilities, physical barriers pose a greater hindrance to incentivising transparency than technological ones. This is borne out in the data – Computershare indicated that shareholder attendance increased by 36 per cent in 2020 compared to 2019, indicating that physical barrier to attendance is, in net terms, greater than technological barriers. Returning to status quo once the temporary relief ends will restrict the ability for shareholders to engage with their companies which may lead to poorer outcomes for these shareholders.

Reducing regulatory burden

2.30 This option also does not achieve the other objective of reducing regulatory burden. Companies incur significant costs associated with holding a physical meeting. In a 2015 Link Group AGM survey, 65 per cent indicated that the cost is the most important consideration when determining an AGM venue. As mentioned by the GIA, AIRA and the AICD, this could range between \$250,000 and \$1,000,000. The GIA and AIRA indicate that in 2019, 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. The GIA also indicated that the ASX 20 spends around \$13 million on each mail-out per AGM. Such costs are unnecessarily being sunk, when voting in respect of companies in the ASX 50 and ASX 300 is primarily executed digitally (54 per cent and 60 per cent respectively). Of the proxy forms that are sent by post, Link Group indicated that the average return rate of forms in 2019 was 3.87 per cent, despite the inclusion of business reply envelopes. This is consistent with finding by Link Group and Computershare that around 0.17 per cent of shareholders attended AGMs in 2018, and in 2019 it was 0.19 – 0.20 per cent.

2.31 Additionally, even though prior to the relief companies were allowed to utilise technology to hold hybrid meetings, this has not been the practice. In 2018, Link Group only held seven hybrid meetings out of the 700 meetings held in the year. Stakeholder

feedback suggests that a barrier to holding hybrid meetings result from a number of legal uncertainties, that are not worth dealing with in light of the significant costs associated with holding a physical meeting.

2.32 Therefore, by maintaining the status quo, companies will continue to incur costs associated with holding in person meetings, posting notice of meetings and meeting-related materials and travel for directors to attend the meetings. This would result in a missed regulatory savings, estimated at up to \$82 million per year (based on an average of 10 years).

Document execution

2.33 Once the temporary relief expires, companies and their directors will be required to execute documents 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 also be postal delays that may impose on the documents being executed in a timely manner. By maintaining the status quo, this would result in a missed regulatory saving of up to \$445 million per year (based on an average of 10 years).

Option 2 – Allowing the use of technology to meet legal requirements in respect of meetings and electronic document execution

2.34 Feedback on the temporary measures suggest that allowing the use of technology to meet legal requirements in respect of meetings and the electronic execution of documents reduces regulatory burden on companies and allows companies to more effectively engage with their shareholders overall.

Meetings

2.35 Option 2 will allow companies to continue to hold meetings virtually and be able to send meeting materials electronically. This reform will benefit companies and shareholders by reducing regulatory burden and providing wider opportunities for participation.

Reduced regulatory burden

2.36 As companies will be able to meet regulatory requirements in respect of meetings using technology, they will be able to choose the most efficient mix of technologies available to meet these regulatory requirements. This means that in making the decision of whether to physically host a meeting, companies need only have regard to the needs of their particular shareholders, rather making this decision on the basis of regulatory requirements. As the vast majority of

shareholders deal with matters related to their shareholdings digitally, it is likely that many companies will continue to save on the significant costs associated with posting materials and physical hosting meetings.

Greater shareholder participation

2.37 If companies are able to host virtual meetings, when they do so, shareholders will no longer have to incur the costs associated with attending a physical meeting in order to engage with companies. The 36 per cent increase in attendance at virtual meetings in 2020, compared to physical meetings held in 2019, suggests that this has a positive impact on communications between shareholders and directors. In addition, Computershare data indicates that there has been more or about the same engagement at virtual meetings relative to physical meetings. For example, they indicate that the three major ASX 50 companies that held AGMs during April and May 2020 received an average of 33 written questions, which is a lot more questions than normal in a physical meeting.

2.38 However, other stakeholder feedback, indicates that while virtual meetings facilitate a greater breadth of engagement from shareholders, the quality of engagement could be improved vis-à-vis a physical meeting. That is, virtual meetings can make it easier for a board to avoid difficult questions, such as combining questions which may lose the meaning of certain questions, or cherry-picking questions. There has also been feedback that the ability to ask follow up questions in a virtual meeting should be facilitated. Some have suggested that meeting practices including chairing of the meetings, in a virtual environment, should evolve and improve to better replicate the experience of a physical meeting.

Methodology used to estimate regulatory savings

2.39 Regulatory savings come from listed companies' AGM being shifted from in-person to online and from companies signing and sending documents electronically.

2.40 There are approximately 2,200 listings on the Australian Securities Exchange and the National Stock Exchange of Australia. AIRA, the AICD and the GIA state that the cost of holding an AGM for ASX 200 company to comply with regulatory requirements, can range between \$250,000 and \$1,000,000.

2.41 The GIA have also indicated that there are around 20 million shareholdings in Australia, and around 50 per cent of these would receive had copy mail-outs. Each mail-out would respectively attract a printing and postage cost of around \$1.50 and \$2.20.

2.42 In line with this information, the following assumptions were made to determine the regulatory savings of allowing legal requirements in respect of meetings to be met using technology:

- Listed companies will be able to email half of the approximately 50 per cent of 20 million shareholders per year, that they currently post hard copies to.
- The cost of holding a large physical meeting is \$300,000 and a medium physical meeting is \$100,000.
- ASX 20 companies hold large physical meetings and non-ASX 20 companies hold medium physical meetings.
- 20 per cent of ASX 20 companies hold fully online meetings.
- 50 per cent of non-ASX 20 companies hold fully online meetings.
- Office of Best Practice Regulation (OBPR) work-related labour cost of \$73.05 per hour.
- Time cost of printing and other mailroom activities involved in sending a letter is six minutes.
- Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.
- Directors save an hour of travel time not having to attend meetings.

2.43 The cost of an ASX 20 company to hold an online AGM is \$50,000 and for non-ASX 20 companies, it is \$20,000 (investment in software and virtual capabilities).

2.44 To permanently allow for virtual meetings would result in an average regulatory saving of approximately \$81 million a year for businesses. The regulatory savings are calculated as an average over 10 years. No regulatory savings is calculated for individuals as it is optional for shareholders to attend the meetings.

Document execution

2.45 By allowing for electronic execution of documents in Option 2, it will realise significant cost savings for companies. Specifically, businesses will no longer have to incur costs associated with travelling to sign and witness physical documents in the same location and costs associated with transporting documents to counterparties (estimated at \$435 million per year, based on an average of over 10 years).

2.46 These changes will be particularly significant if a trend of working from home continues, although it may be less pronounced than it has been during the Coronavirus outbreak. As a result of the Coronavirus outbreak 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 enter into a binding contract.

2.47 A possible risk of this option is that, 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 are also more likely to leave an audit trail if need be.

Methodology used to estimate regulatory burden

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

- An estimate of 900,000 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 six minutes.
- Printing and postal costs per actual letter are respectively \$1.50 and \$2.20.

2.49 By allowing 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 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 postal costs.

2.50 By allowing for electronic document execution there is an average regulatory saving of \$435 million a year, averaged over 10 years.

2.51 Overall, Option 2 results in an average saving of \$516 million per year. This is a result of combining the savings associated with virtual meetings (\$81 million) and electronic document execution (\$435 million).

Table 1.1: Regulatory burden estimate (RBE) table

Average annual regulatory costs (relative to status quo)				
Change in costs (\$ million)	Business	Community organisations	Individual	Total change in cost
Total, by sector	-516	0	0	-516

Option 3 – Allowing the use of technology to meet legal requirements in respect of meetings and document execution with enhancements

2.52 As with Option 2, feedback on the temporary measures suggest that allowing the use of technology to meet legal requirements in respect of meetings and the electronic execution of documents reduces regulatory burden on companies and allows companies to more effectively engage with their shareholders. Enhancements have been incorporated in Option 3 to address feedback raised by stakeholders about the lived-experience of the practical operation of the temporary relief.

Meetings

2.53 In relation to meetings, companies and shareholders will continue to obtain the same benefits as in Option 2, in terms of lower regulatory burden and facilitating transparency between shareholders and directors.

2.54 However, Option 3 includes a number of enhancements that will further lower regulatory burden or better facilitate transparency relative to Option 2.

2.55 The first enhancement is to require companies to record in full and provide members' access to all questions and comments submitted before or during a meeting, that are intended to be covered during the meetings. This has the benefit of providing additional transparency between shareholders and the company. This is because it makes available a record to all shareholders as to the questions and comments provided to a company, which shareholders can use to hold companies accountable for conduct during the meeting. However, companies will entail a minor regulatory burden, associated with collating materials, preparing for publication and making the materials accessible to shareholders.

2.56 The second enhancement is to allow companies to keep, retain and provide meeting minutes electronically. In addition to reducing regulatory burden associated with physical storage and access to minutes, this also facilitates transparency for shareholders, who will be able to access this material electronically, rather than having to physically attend the location of the minutes, or wait for the company to send a copy by post.

2.57 The third enhancement is to clarify that electronic or alternative technologies may be used to execute or sign material related to a meeting. This means that companies can benefit from the lower regulatory burden associated with choosing these methods, and will not need to conduct unnecessary due diligence to ensure that these methods are legally permissible in their particular circumstances.

Methodology used to estimate regulatory savings

2.58 The same assumptions as in Option 2 are used for Option 3 in regards to the number of public companies and the postal costs along with the following new assumptions included in the methodology:

- 75 per cent of AGMs are either online or hybrid;
- it takes three hours to meet the new transparency requirements for online or hybrid meetings;

- two documents are now executed electronically in relation to meetings; and
- it takes two directors one hour to travel and meet to execute documents in relation to meetings.

2.59 The requirement to increase transparency in online and hybrid meeting will add a slight regulatory cost on companies holding an AGM. This leads to an increase in cost of approximately \$361,000 per year (over 10 years).

2.60 The current temporary measures have created some uncertainty in respect to alternative technologies that may be used to execute or sign all materials related to a meeting. Similarly, there is uncertainty relating to documents such as meeting minutes to be kept, retained and provided electronically. The proposed changes remove the uncertainty which will allow for more documents relating to meeting be executed electronically, resulting in a regulatory saving of approximately \$684,000 per year (over 10 years).

2.61 Combining the regulatory savings relating to virtual meetings and meeting materials from the temporary measures with the new regulatory savings and costs results in an overall regulatory saving of \$82 million per year (over 10 years).

Document execution

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

2.63 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. By clarifying that companies will be able to create and sign deeds electronically, this option means that the costs of executing deeds can be saved without companies having to unnecessarily undertake due diligence to ensure that they are able to validly execute deeds using this method in their particular circumstances. By allowing companies to execute documents with a common seal electronically, including by allowing to validly witness the fixing of a company seal electronically, companies have an additional method they can choose from, that they might use the most efficient and reliable mix of technologies in their circumstances.

Methodology used to estimate regulatory savings

2.64 The same assumptions as in Option 2 are used for Option 3 in regards to the number of companies and the postal costs. With the following new assumption included in the methodology:

- On average, 20 per cent of businesses execute one deed every six months.

2.65 The regulatory savings for deeds are calculated using the same method for the electronic execution of documents but at a rate of 20 per cent of businesses every six months. By allowing for electronic execution of deed there is an average regulatory saving of \$10 million per year (over 10 years).

2.66 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.

2.67 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 \$445 million per year (over 10 years).

2.68 Overall, Option 3 results in an average saving of \$527 million per year. This is a result of combining the savings associated with virtual meetings (\$82 million) and electronic document execution (\$445 million).

Table 1.2: Regulatory burden estimate (RBE) table

Average annual regulatory costs (relative to the status quo)				
Change in costs (\$ million)	Business	Community organisations	Individual	Total change in cost
Total, by sector	-527	0	0	-527

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

2.69 Prior to the Coronavirus outbreak, the Government was already 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 meetings and document execution.

2.70 As a result of the Treasurer using his temporary power to introduce regulatory relief during the Coronavirus outbreak, stakeholders have had an unprecedented opportunity to test the operation of legislative amendments since its introduction on 5 May 2020. Companies and shareholders alike have been taking advantage of these reforms, sending meeting materials electronically, respectively hosting virtual meetings and attending in greater numbers than previously occurred when they were held physically, and executing documents electronically.

2.71 This experience has 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 in this area. In summary, there has been an overall positive experience on the reforms, leading to many businesses and industry groups calling for them to be made permanent. However some stakeholders, including investor representative groups, have raised some concerns as follows:

- Shareholder participation and transparency – observations that some boards have skipped difficult questions, or questions are being edited and not properly retold. There has also been feedback that the ability to ask follow up questions in a virtual meeting should be facilitated. Transparency is important so that investors are aware of the number and type of questions being asked and no cherry picking of questions. Some companies have published the questions on their website.
 - To address this, the permanent reforms will require companies to record and provide members’ access to all questions and comments submitted before or during a meeting, that are intended to be covered during the meetings.
- Further observations have suggested that meeting practices including chairing of the meetings, in a virtual environment, should evolve and improve to better replicate the experience of a physical meeting.

- The Australian Shareholders’ Association have produced a guide to online meetings. Also, companies have included instructions within the notice of meeting as to how to shareolders can participate online.
- Uncertainty of the legal position regarding the need for a wet-ink signature for company minutes contained in section 251A of the *Corporations Act 2001*, as well as the need for the minutes to be recorded in the minutes book and held at the company’s registered office.
 - To address this, the permanent reforms will allow companies to keep, retain and provide meeting minutes electronically.
- The temporary measures do not expressly state that the relief applies to execution of deeds by companies, creating some uncertainty.
 - To address this, the permanent reforms will make clear that companies will be able to create and sign deeds electronically. In addition the permanent reforms will 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.

2.72 In addition, the Government has used the opportunity provided through the Senate Select Committee on Financial Technology and Regulatory Technology to publicly consult on these reforms (the Committee). The terms of reference of this Committee requires them to consider opportunities for the RegTech industry to strengthen compliance but also reduce costs. In the Issues Paper that they released on 23 October 2019, they 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. They also conducted a number of public hearings between 30 June 2020 and 10 August 2020. Submitters to the inquiry, as well as those attending these hearings used these opportunities to comment on the effectiveness of the temporary measures and the possibility of them been made permanent. The Committee released an interim report in September 2020 which included four relevant recommendations: (1) that companies have the option of holding virtual, hybrid or in-person meetings; (2) that companies communicate with shareholders electronically by default with shareholders to receive paper-based communication on an opt-in

basis; and that (3) electronic execution and (4) witnessing of documents be allowed.

2.73 The Government's observations, informal stakeholder communications and the public consultation done through the Committee, suggest that overall there is strong stakeholder support for these reforms.

2.74 In respect of meetings:

- shareholder attendance has increased 36 per cent (according to statistics from Computershare) suggesting that overall, shareholders have a strong preference for virtual attendance relative to physical attendance; and
- key industry submissions from AICD, GIA, Business Council of Australia and Link Group have called for these reforms to be made permanent.

2.75 However, while shareholder attendance at meetings has significantly increased, the Australian Shareholders' Association has indicated a preference for hybrid meetings, expressing concern around the lack of transparency for shareholders to engage with the board in a virtual environment. That is, some companies may be able to avoid difficult questions in a virtual environment. For this reason, Option 3 provides for additional transparency by requiring members' to have access to a record of all questions and comments submitted before or during a meeting that are intended to be covered during the meeting.

2.76 In respect of the electronic execution of documents, a coalition of associations including the Australian Banking Association, Law Society, the Financial Services Council and Real Estate Institute of NSW, the Australian Institute of Company Directors and the Australian Property Institute wrote to each member of National Cabinet to urge making permanent changes to electronic execution of documents. A number of other stakeholders have also supported these reforms, including the Law Council of Australia, GIA and Link Group. Stakeholders have also indicated that they would support the electronic execution of deeds and the option to use an electronic equivalent to the common seal method of execution.

What is the best option from those you have considered?

2.77 The Government proposes to implement Option 3, which provides the greatest opportunity to address the longstanding issue of the lack of technological neutrality surrounding these *Corporations Act 2001* requirements. This has the benefit of reducing the regulatory burden while increasing transparency overall relative to the status quo.

Companies will have the option of choosing between providing online facilities or not, in addition to hosting at a physical location, in order to determine the optimal way of engaging with their shareholders.

2.78 Out of the three options, Option 3 entails the greatest net regulatory savings – estimated at \$527 million per year, on average, arising from providing companies with the greatest flexibility to choose the most efficient technologies to meet their substantive regulatory requirements in respect of meetings and document execution.

2.79 However, out of the three options it also provides the most benefits in terms of facilitating an adequate level of transparency by providing better opportunities for sound communication between the directors and shareholders of a company, for four reasons. First, it provides incentives for companies to choose a meeting format that allows shareholders, for whom the vast majority physical barriers to attendance are greater than technological barriers, to attend. Second, it addresses concerns that companies may take advantage of the virtual environment to avoid difficult questions or otherwise limit shareholder engagement. This is because it includes additional legislative safeguards, that are not currently available to shareholders even if a company chooses to host a hybrid meeting – specifically, it mandates that companies choosing to hold a meeting virtually (1) record and give members’ access to all questions and comments submitted before or during a meeting that are intended to be covered during the meeting; (2) hold votes via a poll rather than a show of hands as befits an online setting and include online attendees in quorums; in addition to (3) requiring companies to provide shareholders a reasonable opportunity to participate which will be a specific legislated requirement for virtually-held meetings. Thirdly, it provides incentives for companies to remove physical barriers that may make it unnecessarily difficult for shareholders to access meeting minutes. Finally, the legislation allows companies flexibility to meet the demands of their particular shareholder base, including continuing to hold physical or hybrid meetings.

2.80 While some stakeholders have indicated a preference for hybrid meetings, mandating these is not a viable option in light of the identified problem and Government’s objectives of addressing the lack of technological neutrality and so allowing companies to use the most efficient technological mix to deliver upon substantive regulatory outcomes. This is because mandating would entail regulatory costs. As noted, Option 3 contains legislative safeguards that address the observed concerns in respect of adequate and transparent engagement in a virtual environment.

How will you implement and evaluate your chosen option?

2.81 Subject to policy approval, the chosen option will be implemented via permanent legislative changes to the *Corporations Act 2001* and other related subordinate instruments.

2.82 Regarding evaluation, the exposure draft legislation contains a clause requiring the reforms to be reviewed as soon as practicable after five years of the permanent reforms commencing.

Table 1.3: Regulatory burden estimate (RBE) table

Average annual regulatory costs (Option 2)				
Change in costs (\$ million)	Business	Community organisations	Individual	Total change in cost
Total, by sector	-516	0	0	-516
Average annual regulatory costs (Option 3)				
Change in costs (\$ million)	Business	Community organisations	Individual	Total change in cost
Total, by sector	-527	0	0	-527