

Manager
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

29 October 2020

CONFIDENTIAL

By email: businesscomms@treasury.gov.au

**Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020
(Exposure Draft Bill)**

Submission regarding the Exposure Draft Bill

Background

1. Section 127 of the *Corporations Act 2001 (Cth)* (**Corporations Act**), as currently drafted, does not deal with the circumstances where there is a sole director of a proprietary company and there is no secretary of that company.
2. A sole director (where there is no secretary) is not identified as being able to execute a document under section 127 of the Corporations Act. This situation arose when the Corporations Act was amended to no longer require a proprietary company to have a secretary.
3. Section 127 of the Corporations Act, as currently drafted, has caused difficulty and unnecessary costs for proprietary companies that have a sole director and no secretary as this issue requires:
 - (a) a review of the company constitution to check whether the constitution permits the sole director to execute documents without a secretary; and
 - (b) if necessary, the company constitution to be amended and approved by special resolution of the shareholders, to permit a sole director to execute documents without a secretary.
4. Given that:
 - (a) the Corporations Act permits a proprietary company to have a sole director and no secretary;
 - (b) the Corporations Act does not require a proprietary company to have a secretary; and
 - (c) in practice, many proprietary companies only have a sole director and do not have a secretary,

section 127 of the Corporations Act should be amended to make it clear that where a proprietary company has a sole director and no secretary, the company may execute a document if the document is signed by that sole director.

Proposed Amendment to section 127 of the Corporations Act

5. To address the issue identified above, we suggest that:
 - (a) a new section 127(1)(d) be inserted in the Corporations Act to read as follows:

"(d) *for a proprietary company that has a sole director and does not have a company secretary --that director.*"; and
 - (b) a new section 127(2)(d) be inserted in the Corporations Act to read as follows:

"(d) *for a proprietary company that has a sole director and does not have a company secretary --that director.*",

(the **Proposed Amendment**).
6. The Proposed Amendment is a simple solution to a significant issue for proprietary companies nationwide.
7. Give that section 127 of the Corporations Act is in the process of being amended in relation to electronic execution, this is an opportune time to also make the Proposed Amendment.

If you have any questions, or wish to discuss, please do not hesitate to contact us.

Yours faithfully

BROWN WRIGHT STEIN

