

# EXPOSURE DRAFT

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

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## Schedule 1—Facilitating the use of technology for meetings

### *Corporations Act 2001*

#### 1 After section 248C

Insert:

#### 248D Use of technology

A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

#### 2 Section 249R

Repeal the section, substitute:

#### 249R How meetings of members may be held

A company may hold a meeting of its members:

- (a) at one or more physical venues; or
- (b) at one or more physical venues and using virtual meeting technology; or
- (c) using virtual meeting technology only, if this is required or permitted by the company's constitution.

#### 249RA Place and time of meetings and presence at meetings

- (1) The place at which a meeting of the members of a company is held is taken to be:
  - (a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or
  - (b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or
  - (c) if the meeting is held using virtual meeting technology only—the registered office of the company.

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- 1 (2) The time at which the meeting is held is taken to be the time at the  
2 place at which the meeting is held.
- 3 (3) A member who attends the meeting (whether at a physical venue or  
4 by using virtual meeting technology) is taken for all purposes to be  
5 present in person at the meeting while so attending.

## 6 **249S Reasonable opportunity to participate**

- 7 (1) A company that holds a meeting of its members must give the  
8 members entitled to attend the meeting, as a whole, a reasonable  
9 opportunity to participate in the meeting.

10 Note: Section 1322 provides for consequences of a breach of this subsection.

- 11 (2) Without limiting the scope of subsection (1), the effects of that  
12 subsection include those set out in subsections (3), (4), (5), (6), (7),  
13 (8) and (9).
- 14 (3) The meeting must be held at a time that is reasonable at:
- 15 (a) if the meeting is held at only one physical venue (whether or  
16 not it is also held using virtual meeting technology)—that  
17 physical venue; or
- 18 (b) if the meeting is held at more than one physical venue  
19 (whether or not it is also held using virtual meeting  
20 technology)—the main physical venue of the meeting as set  
21 out in the notice of the meeting; or
- 22 (c) if the meeting is held using virtual meeting technology  
23 only—a physical venue at which it would be reasonable to  
24 hold the meeting.
- 25 (4) If the meeting is held at only one physical venue (whether or not it  
26 is also held using virtual meeting technology), it must be  
27 reasonable to hold the meeting at that physical venue.
- 28 (5) If the meeting is held at more than one physical venue (whether or  
29 not it is also held using virtual meeting technology), it must be  
30 reasonable to hold the meeting at its main physical venue as set out  
31 in the notice of the meeting.
- 32 (6) If the meeting is held at more than one physical venue (whether or  
33 not it is also held using virtual meeting technology), the technology  
34 used to hold the meeting at more than one physical venue must be  
35 reasonable.

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- 1 (7) If the meeting is held using virtual meeting technology (whether or  
2 not it is also held at more than one physical venue), that virtual  
3 meeting technology must be reasonable.
- 4 (8) If a law or the company's constitution confers a right to speak or  
5 ask questions at the meeting on:  
6 (a) the members entitled to attend the meeting as a whole; or  
7 (b) a member entitled to attend the meeting;  
8 that right may be exercised orally or in writing.
- 9 (9) A person is taken to have tabled a document at a meeting of the  
10 members of a company if:  
11 (a) a law or the company's constitution requires or permits the  
12 person to table the document at the meeting; and  
13 (b) the person makes a copy of the document reasonably  
14 accessible to members attending the meeting, for example  
15 by:  
16 (i) giving a copy of the document before the meeting to the  
17 members entitled to attend the meeting; or  
18 (ii) giving a copy of the document during the meeting to the  
19 members attending the meeting; or  
20 (iii) screencasting the document in a reasonable way during  
21 the meeting to the members attending the meeting, as a  
22 whole.

### 3 Paragraph 250BB(1)(b)

23 Repeal the paragraph, substitute:

- 24 (b) if the proxy has 2 or more appointments that specify different  
25 ways to vote on the resolution—the proxy must not vote on a  
26 show of hands; and  
27

### 4 Subsection 250J(1)

28 Repeal the subsection, substitute:

- 29 (1) A resolution put to the vote at a meeting of a company's members  
30 must be decided on a show of hands unless a poll is demanded.  
31

### 5 Section 252P

32 Repeal the section, substitute:  
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## 252P How meetings of members may be held

A registered scheme may hold a meeting of its members:

- (a) at one or more physical venues; or
- (b) at one or more physical venues and using virtual meeting technology; or
- (c) using virtual meeting technology only, if this is required or permitted by the scheme's constitution.

## 249PA Place and time of meetings and presence at meetings

(1) The place at which a meeting of the members of a registered scheme is held is taken to be:

- (a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or
- (b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or
- (c) if the meeting is held using virtual meeting technology only—the registered office of the responsible entity of the scheme.

(2) The time at which the meeting is held is taken to be the time at the place at which the meeting is held.

(3) A member who attends the meeting (whether at a physical venue or by using virtual meeting technology) is taken for all purposes to be present in person at the meeting while so attending.

## 252Q Reasonable opportunity to participate

(1) A registered scheme that holds a meeting of its members must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.

Note: Section 1322 provides for consequences of a breach of this subsection.

(2) Without limiting the scope of subsection (1), the effects of that subsection include those set out in subsections (3), (4), (5), (6), (7), (8) and (9).

(3) The meeting must be held at a time that is reasonable at:

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- 1 (a) if the meeting is held at only one physical venue (whether or  
2 not it is also held using virtual meeting technology)—that  
3 physical venue; or  
4 (b) if the meeting is held at more than one physical venue  
5 (whether or not it is also held using virtual meeting  
6 technology)—the main physical venue of the meeting as set  
7 out in the notice of the meeting; or  
8 (c) if the meeting is held using virtual meeting technology  
9 only—a physical venue at which it would be reasonable to  
10 hold the meeting.
- 11 (4) If the meeting is held at only one physical venue (whether or not it  
12 is also held using virtual meeting technology), it must be  
13 reasonable to hold the meeting at that physical venue.
- 14 (5) If the meeting is held at more than one physical venue (whether or  
15 not it is also held using virtual meeting technology), it must be  
16 reasonable to hold the meeting at its main physical venue as set out  
17 in the notice of the meeting.
- 18 (6) If the meeting is held at more than one physical venue (whether or  
19 not it is also held using virtual meeting technology), the technology  
20 used to hold the meeting at more than one physical venue must be  
21 reasonable.
- 22 (7) If the meeting is held using virtual meeting technology (whether or  
23 not it is also held at more than one physical venues), that virtual  
24 meeting technology must be reasonable.
- 25 (8) If a law or the scheme’s constitution confers a right to speak or ask  
26 questions at the meeting on:  
27 (a) the members entitled to attend the meeting as a whole; or  
28 (b) a member entitled to attend the meeting;  
29 that right may be exercised orally or in writing.
- 30 (9) A person is taken to have tabled a document at a meeting of the  
31 members of a registered scheme if:  
32 (a) a law or the scheme’s constitution requires or permits the  
33 person to table the document at the meeting; and  
34 (b) the person makes a copy of the document reasonably  
35 accessible to members attending the meeting, for example  
36 by:  
37 (i) giving a copy of the document before the meeting to the  
38 members entitled to attend the meeting; or
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- 1 (ii) giving a copy of the document during the meeting to the  
2 members attending the meeting; or  
3 (iii) screencasting the document in a reasonable way during  
4 the meeting to the members attending the meeting, as a  
5 whole.

## 6 **Subsection 252Z(4) (note)**

7 Omit “company” (wherever occurring), substitute “responsible entity”.

## 8 **Subsection 253J(2)**

9 Repeal the subsection, substitute:

- 10 (2) Any other resolution put to the vote at a meeting of the scheme’s  
11 members must be decided on a show of hands unless a poll is  
12 demanded. The resolution is passed on a poll if it has been passed  
13 by at least 50% of the votes cast by members entitled to vote on the  
14 resolution.

## 15 **Part 2G.5 (heading)**

16 Repeal the heading, substitute:

## 17 **Part 2G.5—Electronic communication of** 18 **documents and recording and keeping of** 19 **minute books**

## 20 **Division 2 of Part 2G.5**

21 Repeal the Division.

## 22 **Subsection 253RA(4)**

23 After “ASIC”, insert “or the Registrar”.

## 24 **Subsection 253RD(3)**

25 After “ASIC”, insert “or the Registrar (as the case requires)”.

## 26 **Subsection 1322(3A)**

27 Repeal the subsection, substitute:

- 28 (3A) If the members of a company who are entitled to attend a meeting  
29 of the company’s members do not have, as a whole, a reasonable  
30 opportunity to participate in the meeting or in a proceeding at the  
31 meeting, the meeting will only be invalid on that ground if:

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- 1 (a) the Court is of the opinion that:  
2 (i) a substantial injustice has been caused or may be  
3 caused; and  
4 (ii) the injustice cannot be remedied by any order of the  
5 Court; and  
6 (b) the Court declares the meeting or proceeding invalid.

## 7 **13 At the end of section 1679A**

8 Add:

9 Note: The amendments relating to Chapter 2G meetings made by Schedule 1  
10 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* are  
11 superseded by the amendments made by Schedule 1 to the *Treasury*  
12 *Laws Amendment (Measures for Consultation) Act 2021* (see section  
13 1687A).

## 14 **14 Sections 1679E and 1679F**

15 Repeal the sections.

## 16 **15 In the appropriate position in Chapter 10**

17 Insert:

## 18 **Part 10.60—Application and transitional provisions** 19 **relating to Schedule 1 to the Treasury Laws** 20 **Amendment (Measures for Consultation)** 21 **Act 2021** 22

### 23 **1687 Definitions**

24 In this Part:

25 *amending Schedule* means Schedule 1 to the *Treasury Laws*  
26 *Amendment (Measures for Consultation) Act 2021*.

27 *Chapter 2G meeting* has the meaning given by section 253P.

28 *commencement day* means the day on which Schedule 1 to the  
29 *Treasury Laws Amendment (Measures for Consultation) Act 2021*  
30 commences.



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## 1687A Application—meetings using virtual meeting technology

- 1
- 2 (1) The amendments made by the amending Schedule apply in relation
- 3 to a Chapter 2G meeting if notice of the meeting is given on or
- 4 after the commencement day.
- 5 (2) Despite subsection (1), the amendments made by items 1, 2, 5 and
- 6 9 of the amending Schedule do not apply in relation to a
- 7 Chapter 2G meeting if:
- 8 (a) before the commencement day, notice of the meeting is given
- 9 to at least one person entitled to attend the meeting; and
- 10 (b) the meeting is held before 16 September 2021.

## 1687B Review of operation of laws

- 11
- 12 (1) The Minister must cause a review to be undertaken of the operation
- 13 of this Act, as in force immediately after the commencement of this
- 14 section, resulting from the amendments made by:
- 15 (a) Schedule 1 to the *Treasury Laws Amendment (2021*
- 16 *Measures No. 1) Act 2021*; and
- 17 (b) the amending Schedule and Schedule 2 to the *Treasury Laws*
- 18 *Amendment (Measures for Consultation) Act 2021*.
- 19 (2) The review must be conducted no later than the earliest practicable
- 20 day after the end of 2 years after this section commences.
- 21 (3) The Minister must cause one or more written reports about the
- 22 review to be prepared.
- 23 (4) If there is more than one report under subsection (3), each of those
- 24 reports need not deal with the operation of all the amendments
- 25 mentioned in subsection (1). However, the reports as a whole must
- 26 deal with all of those amendments.
- 27 (5) The Minister must cause a copy of a report of a review under
- 28 subsection (3) to be tabled in each House of the Parliament within
- 29 15 sitting days of that House after the report is given to the
- 30 Minister.

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## Schedule 2—Other amendments relating to meetings and documents

### *Corporations Act 2001*

#### **1 Paragraph 127(1)(c)**

Repeal the paragraph, substitute:

- (c) for a proprietary company that has a sole director—that director, if:
  - (i) the director is also the sole company secretary; or
  - (ii) the company does not have a company secretary.

#### **2 Paragraph 127(2)(c)**

Repeal the paragraph, substitute:

- (c) for a proprietary company that has a sole director—that director, if:
  - (i) the director is also the sole company secretary; or
  - (ii) the company does not have a company secretary.

#### **3 Subsection 129(5)**

Repeal the subsection (not including the heading), substitute:

- (5) A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1).

#### **4 Subsection 129(6)**

Repeal the subsection (not including the heading), substitute:

- (6) A person may assume that a document has been duly executed by the company if:
  - (a) the company's common seal appears to have been fixed to the document in accordance with subsection 127(2); and
  - (b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.

#### **5 At the end of Chapter 2G**

Add:

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## Part 2G.6—Independent reports on polls

### 253T Application of Part

This Part applies:

- (a) in relation to a company, if the company is listed; and
- (b) in relation to a registered scheme, if the scheme is listed.

### 253V Company members' rights to request observer on poll

- (1) Members of a company with at least 5% of the votes that may be cast at a meeting of the company may request the company to appoint an independent person to observe the conduct of a poll at the meeting.
  - (2) The request must:
    - (a) be in writing; and
    - (b) identify the poll to which it relates; and
    - (c) be made no later than 5 business days before the day the meeting is held.
  - (3) A company commits an offence if:
    - (a) the company receives a request under subsection (1); and
    - (b) the company fails to take reasonable steps to ensure that an independent person observes the conduct of the poll to which the request relates.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (4) An offence based on subsection (3) is an offence of strict liability.
  - (5) A company that appoints an independent person for the purposes of this section is liable to pay the person his or her fees.
  - (6) To avoid doubt, an independent person appointed for the purposes of this section may be an auditor (including an auditor of the company concerned), unless the relevant poll concerns an issue relating to the person.

### 253VA Company members' rights to request report on poll

- (1) Members of a company with at least 5% of the votes that may be cast at a meeting of the company may request the company to

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- 1 appoint an independent person to prepare a report on a poll at the  
2 meeting.
- 3 (2) The request must:  
4 (a) be in writing; and  
5 (b) identify the poll to which it relates; and  
6 (c) be made no later than 5 business days after the day the  
7 meeting is held.
- 8 (3) To avoid doubt, the request may be made before the meeting is  
9 held.
- 10 (4) A company commits an offence if:  
11 (a) the company receives a request under subsection (1); and  
12 (b) the company fails to take reasonable steps to:  
13 (i) ensure that an independent person prepares a report on  
14 the poll to which the request relates; and  
15 (ii) ensure that a copy of the report is made readily available  
16 to the members of the company within a reasonable  
17 time after the request is received.
- 18 Note: Failure to comply with this subsection is an offence (see  
19 subsection 1311(1)).
- 20 (5) An offence based on subsection (4) is an offence of strict liability.
- 21 (6) A company that appoints an independent person for the purposes of  
22 this section is liable to pay the person his or her fees.
- 23 (7) To avoid doubt, an independent person appointed for the purposes  
24 of this section may be an auditor (including an auditor of the  
25 company concerned), unless the relevant poll concerns an issue  
26 relating to the person.

## 27 **253W Registered scheme members' rights to request observer on** 28 **poll**

- 29 (1) Members of a registered scheme with at least 5% of the votes that  
30 may be cast at a meeting of the scheme may request the responsible  
31 entity of the scheme to appoint an independent person to observe  
32 the conduct of a poll at the meeting.
- 33 (2) The request must:  
34 (a) be in writing; and  
35 (b) identify the poll to which it relates; and
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- 1 (c) be made no later than 5 business days before the day the  
2 meeting is held.
- 3 (3) A responsible entity of a registered scheme commits an offence if:  
4 (a) the responsible entity receives a request under subsection (1);  
5 and  
6 (b) the responsible entity fails to take reasonable steps to ensure  
7 that an independent person observes the conduct of the poll  
8 to which the request relates.
- 9 Note: Failure to comply with this subsection is an offence (see  
10 subsection 1311(1)).
- 11 (4) An offence based on subsection (3) is an offence of strict liability.
- 12 (5) A responsible entity of a registered scheme that appoints an  
13 independent person for the purposes of this section is liable to pay  
14 the person his or her fees.
- 15 (6) To avoid doubt, an independent person appointed for the purposes  
16 of this section may be an auditor (including an auditor of the  
17 registered scheme concerned), unless the relevant poll concerns an  
18 issue relating to the person.

## 19 **253WA Registered scheme members' rights to request report on** 20 **poll**

- 21 (1) Members of a registered scheme with at least 5% of the votes that  
22 may be cast at a meeting of the scheme may request the responsible  
23 entity of the scheme to appoint an independent person to prepare a  
24 report on a poll at the meeting.
- 25 (2) The request must:  
26 (a) be in writing; and  
27 (b) identify the poll to which it relates; and  
28 (c) be made no later than 5 business days after the day the  
29 meeting is held.
- 30 (3) To avoid doubt, the request may be made before the meeting is  
31 held.
- 32 (4) A responsible entity of a registered scheme commits an offence if:  
33 (a) the responsible entity receives a request under subsection (1);  
34 and  
35 (b) the responsible entity fails to take reasonable steps to:
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- 1 (i) ensure that an independent person prepares a report on  
2 the poll to which the request relates; and  
3 (ii) ensure that a copy of the report is made readily available  
4 to the members of the scheme within a reasonable time  
5 after the request is received.

6 Note: Failure to comply with this subsection is an offence (see  
7 subsection 1311(1)).

8 (5) An offence based on subsection (4) is an offence of strict liability.

9 (6) A responsible entity of a registered scheme that appoints an  
10 independent person for the purposes of this section is liable to pay  
11 the person his or her fees.

12 (7) To avoid doubt, an independent person appointed for the purposes  
13 of this section may be an auditor (including an auditor of the  
14 registered scheme concerned), unless the relevant poll concerns an  
15 issue relating to the person.

## 16 **253X Right of independent person to information**

### 17 *Right to information*

18 (1) An independent person appointed for the purposes of  
19 section 253VA or 253WA in relation to a poll may make a request  
20 for any information that the person reasonably considers is  
21 necessary for the purposes of preparing a report on the poll.

22 (2) A company commits an offence if:

23 (a) the company receives a request for information under  
24 subsection (1); and

25 (b) the company fails to take reasonable steps to provide the  
26 information to the independent person within a reasonable  
27 time after receiving the request.

28 Note: Failure to comply with this subsection is an offence (see  
29 subsection 1311(1)).

30 (3) A responsible entity of a registered scheme commits an offence if:

31 (a) the responsible entity receives a request for information  
32 under subsection (1); and

33 (b) the responsible entity fails to take reasonable steps to provide  
34 the information to the independent person within a  
35 reasonable time after receiving the request.

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1 Note: Failure to comply with this subsection is an offence (see  
2 subsection 1311(1)).

- 3 (4) An offence based on subsection (2) or (3) is an offence of strict  
4 liability.

## 5 **253Y Record-keeping**

- 6 (1) A company commits an offence if:  
7 (a) the company receives a report on a poll from an independent  
8 person appointed for the purposes of section 253VA in  
9 relation to the poll; and  
10 (b) the company fails to keep a copy of the report.

11 Note: Failure to comply with this subsection is an offence (see  
12 subsection 1311(1)).

- 13 (2) A responsible entity of a registered scheme commits an offence if:  
14 (a) the responsible entity receives a report on a poll from an  
15 independent person appointed for the purposes of  
16 section 253WA in relation to the poll; and  
17 (b) the responsible entity fails to keep a copy of the report.

18 Note: Failure to comply with this subsection is an offence (see  
19 subsection 1311(1)).

- 20 (3) An offence based on subsection (1) or (2) is an offence of strict  
21 liability.

## 22 **6 In the appropriate position in Chapter 10**

23 Insert:

### 24 **Part 10.61—Application provisions relating to** 25 **Schedule 2 to the Treasury Laws** 26 **Amendment (Measures for Consultation)** 27 **Act 2021** 28

#### 29 **1688 Application—execution of documents**

30 Sections 127 and 129, as amended by Schedule 2 to the *Treasury*  
31 *Laws Amendment (Measures for Consultation) Act 2021*, apply in  
32 relation to a document that is executed on or after the  
33 commencement of that Schedule.

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1 **10 In the appropriate position in Schedule 3**

2 Insert:

Subsection 253V(3)	40 penalty units
Subsection 253VA(4)	40 penalty units
Subsection 253W(3)	40 penalty units
Subsection 253WA(4)	40 penalty units
Subsection 253X(2)	40 penalty units
Subsection 253X(3)	40 penalty units
Subsection 253Y(1)	40 penalty units
Subsection 253Y(2)	40 penalty units

3