

Mr Ismadi Bin Jaafar  
Unit 6, 33 Sturt Road  
Bedford Park, SA 5042  
Phone: 0412 719 113  
Email: [binj0005@flinders.edu.au](mailto:binj0005@flinders.edu.au)

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The Treasury  
Langton Crescent  
Parkes Act 2600  
Australia

Dear Sir/Madam,

**Re: Submission pertaining to using technology to hold meetings, sign and send documents.**

Thank you for your invitation seeking stakeholder views on exposure draft legislation to support companies and their officers to use technology to satisfy *Corporations Act 2001* requirements.

### **Short introduction about myself**

As a final year Bachelor of Laws and Legal Practice (Honours) student at Flinders University (SA), I have spent the first half of the year reading, researching and writing about the legislative provisions for general meeting of members under the *Corporations Act 2001*. My dissertation topic which largely focuses on s 249S of the *Corporations Act 2001* attempts to discuss the implications of that section towards shareholders meeting in Australia, particularly during the COVID-19 pandemic. Comparisons against the *Delaware General Corporation Law* and the *Canada Business Corporations Act* have been made in an attempt to seek guidance and learn from Delaware and Canada with respect to whether Australia should legally recognise virtual shareholders meeting.

### **Submissions on the Exposure Draft**

#### **1) Section 249R - How meetings of members may be held**

- a) I would like recommend that the phrase '*within (as determined by the directors) or outside (as provided for by the company's constitution) Australia*' be inserted after 'A company may hold a meeting of its members'. Allowing such flexibility is imperative for today's rapidly changing nature in which corporations conduct their business globally and how they communicate with geographically-dispersed shareholders. This recommendation was inspired by s 132(1) and (2)

of the *Canada Business Corporations Act* and s 211(a)(1) of the *Delaware General Corporation Law*. Having such a wording will not only allow flexibility but will also mitigate future uncertainty should the need for corporations to conduct shareholders meeting outside of Australia arises.

## 2) Section 249RA - Place and time of meetings and presence at meetings

- a) Subsection (3) – I would like to recommend that this subsection be changed to ‘A member who *is entitled to attend the meeting and so attended* is taken for all purposes to be present at the meeting.
- b) I would also like to recommend additional measures for subsection (3), particularly for hybrid and wholly virtual meetings, requiring corporations to implement some form of measures to verify the identity of the members who attended online. This was inspired by s 211(a)(2)(b)(i) of the *Delaware General Corporation Law* which reads ‘the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder’. Having such a requirement serves as an important safeguard for shareholders and corporations against the risks of fraudulent practices such as impersonation which could affect voting outcome.

## 3) 249S - Reasonable opportunity to participate

- a) Based on the Explanatory Memorandum, ‘reasonable opportunity’ is safeguarded under 5 categories namely reasonable place; reasonable time; reasonable technology; right to speak, comment or ask questions; and reasonable access to documents. I acknowledged that, as stated in the Explanatory Memorandum, this is not an exhaustive list and that directors must consider other additional measures which can better fulfil this requirement. However, I would like to recommend additional measures, particularly for hybrid and wholly virtual meeting. Likewise, these recommendations were inspired by s 132(4) and (5) of the *Canada Business Corporations Act* and s 211(a)(2)(b)(ii) and (iii) of the *Delaware General Corporation Law*.
  - i) Voting
    - a. Corporation shall implement reasonable measures to ensure that the technology being used allows shareholders to vote securely.

- ii) Read, hear and see the meeting proceedings
  - a. Corporations shall implement reasonable measures to ensure that the technology being used allows shareholders to read, hear and see the meeting proceedings.
- iii) Record of voting or other actions taken remotely by shareholders at the meeting
  - a. Corporations shall implement reasonable measures to ensure that votes or other actions taken remotely by shareholders or proxyholders be recorded and maintained by the corporation.

#### 4) Others

- a) To ensure that the principles of *shareholders democracy* and *democratic participation* are safeguarded clearly in the legislation.
  - i) The general meeting of members serves as an important ‘check and balance’ mechanism that protects shareholders against mismanagement of corporations. Physical meetings have long been regarded as the bedrock that could enhance overall corporate governance regime within a corporation particularly shareholders rights to participate in the management of the corporation as well as ensuring directors’ accountability. Much of the resistance against virtual meeting stems from the ongoing distrust between shareholders and management. In order to gain shareholders support toward the transition to allowing virtual meetings, policy-makers must first provide shareholders with the confidence that their interests, particularly the ability to continue to participate democratically in the meeting, is well protected. Importantly, the technology used to conduct virtual meetings must be able to replicate most, if not all, the tangible benefits that physical meetings have provided.

Above is my humble submission. Thank you for giving me the valuable opportunity to contribute towards this important and noble cause.

Yours Sincerely,

Ismadi Jaafar