



Australian Banking Association submission: Treasury Laws Amendment (Measures for Consultation) Bill 2021

The Australian Banking Association (ABA) welcomes the opportunity to provide feedback to the Treasury Laws Amendment (Measures for Consultation) Bill 2021 (Bill).

Support key changes in Bill

ABA supports the key changes made in this Bill, which respond to industry feedback and would help to ensure the permanent reforms in the *Corporations Act 2001* facilitate technology neutral and practical approaches to how companies sign documents.

In particular, ABA supports:

- Clarifying in section 110(1) that the amendments apply to the signing of deeds.
- Amending section 110 to extend the reforms to how an agent of a company may execute contracts and sign documents under section 126, and allowing an agent to execute a deed.
- Repealing subsections 127(3A), which would require a person to sign the 'entire document' when signing a physical counterpart of a document.
- Amendments relating to the use of technology for meetings including the proposed amendments relating to when companies may send documents electronically.

Further changes to enhance effectiveness of reforms

ABA supports the proposed amendments being considered by Parliament expeditiously to give industry ample time to implement changes to comply with the reforms. As such ABA strongly supports the proposed bill being finalised and introduced into Parliament as soon as practicable.

However, ABA also asks Treasury to consider making a number of further amendments and clarifying a small number of matters in the Bill. Doing so would enhance the effectiveness and benefit of the Bill for industry.

Clarity about commencement of the Bill

ABA seeks clarification in the Bill and explanatory memorandum about the application of the Bill to meetings. The Bill is stated to commence on the day after the Bill receives Royal Assent. Item 49 of Schedule 1 inserts new section 1687B, which provides that the amendments in this Bill would not apply to a meeting if notice of the meeting is given to at least one person before the commencement of this Bill, and if the meeting is held before 1 April 2022. This creates uncertainty for companies that are planning for conducting a fully virtual annual general meeting (AGM) in reliance on the reforms made under the *Treasury Laws Amendment (Measures for Consultation) Act 2021* (TLAB 1).

ABA seeks greater certainty for companies that are planning for a virtual AGM. If, instead, the intended effect of the Bill is to allow companies to rely on the temporary reforms in TLAB 1 until 31 March 2022, ABA strongly urges Treasury to make this intended application clear in legislation and explanatory memorandum.

Specifying deeds do not need to be made on paper

Following the passage of TLAB 1, ABA understands there is still remaining uncertainty about whether the amendments made by TLAB 1 to section 127 have the effect of removing the rule that deeds must be on paper, parchment or vellum. As a result, in states that have not expressly removed the requirement for deeds to be made on paper, there is doubt whether deeds can be created electronically.



Such uncertainty can significantly reduce the expected benefits of the Bill. To remove any uncertainty, ABA asks Treasury to add an amendment that expressly clarifies that deeds executed under sections 126 or 127 do not need to be made on paper or can be effective despite not being made on paper.

Further amendments relating to agents

ABA welcomes the amendments relating to agents and asks Treasury to consider these further amendments to enhance the benefit of the proposed changes.

- The amendments to section 126 should also authorise agents to deliver deeds.
- Section 126 should provide that the agent's signature to a deed does not need to be witnessed.
- Section 126 should extend to corporations that are appointed as agents by companies, not just individuals appointed as agents.
- Section 129 should include a new assumption that allows parties dealing with agents to assume their signatures comply with s110A. This amendment would bring the position for agents closer to the position applying in relation to signatures under s127(1), which have the benefit of the assumption in s129(5).

Methods and examples of signing

Sections 110A(1) and (2) should not limit methods of physical signing or impose additional specific requirements for physical signing for the purposes of sections 126 and 127. In relation to signing using technology, it would be helpful for the explanatory memorandum to retain the examples of electronic signing that were included in the Treasurer's determinations and in the explanatory memorandum for TLAB 1.

Extend assumptions to directors and secretaries

Items 14 and 15 of Schedule 1 of the Bill insert new sections 129(5) and (6). These provisions allow counterparties to make assumptions concerning sole directors. These assumptions should extend to other directors and secretaries.

Extend reforms to foreign and statutory companies

ABA has previously advocated for the reforms to be extended to foreign and statutory companies, as they form a vital part of the Australian economy. ABA reiterates this proposal.

Modernising business communication

Finally, ABA highlights the importance of further reforms being considered as part of the Modernising Business Communications (MBC) reforms. If any of the proposals provided in this submission cannot be made to the Bill due to timing constraints, ABA asks Treasury to consider these proposals as part of any future changes that may be made as part of the MBC reforms.