



Treasury Laws Amendment (2021 Measures No. 1) Act 2021

No. 82, 2021

**An Act to amend the law in relation to the financial
sector, and for related purposes**

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No. 82, 2021

An Act to amend the law in relation to the financial sector, and for related purposes

[Assented to 13 August 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 13 August 2021 |
| 2. Schedule 1 | The day after this Act receives the Royal Assent. | 14 August 2021 |
| 3. Schedule 2, Parts 1, 2 and 3 | The day after this Act receives the Royal Assent. | 14 August 2021 |
| 4. Schedule 2, Part 4 | The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of items 1061 and 1062 in Schedule 1 to the <i>Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Virtual meetings and electronic communication of documents

Part 1—Main amendments

Corporations Act 2001

1 Section 127 (after the heading)

Insert:

Executing a document without a common seal

2 Before subsection 127(2)

Insert:

Executing a document with a common seal

3 After subsection 127(2)

Insert:

(2A) For the purposes of subsection (2), the fixing of a common seal to a document is taken to have been witnessed by a person mentioned in paragraph (a), (b) or (c) of that subsection if:

- (a) the person observes the fixing of the seal by electronic means; and
- (b) the person signs the document; and
- (c) the document includes a statement that the person observed the fixing of the seal by electronic means.

Note: Subsections (3A) to (3C) set out circumstances in which a person is taken to sign a document by signing a copy or counterpart of the document.

4 Before subsection 127(3)

Insert:

Executing a document as a deed

5 At the end of subsection 127(3)

Add:

Note: The circumstances in which a deed is taken to have been executed by affixing the common seal of a company in accordance with subsection (2) is affected by subsection (2A). Subsection (2A) allows for a witness to observe the affixing of the common seal by electronic means. However, the witness must sign the deed. The circumstances in which a person is taken to sign a document, such as a deed, by signing a copy or counterpart of the document are set out in subsections (3A) to (3C).

6 After subsection 127(3)

Insert:

Signing a physical copy or counterpart

- (3A) For the purposes of this section, a document is taken to have been signed by a person if:
- (a) the person signs a copy or counterpart of the document that is in a physical form; and
 - (b) the copy or counterpart includes the entire contents of the document.

Signing an electronic copy or counterpart

- (3B) For the purposes of this section, a document is taken to have been signed by a person if:
- (a) a method is used to identify the person and to indicate the person's intention to sign a copy or counterpart of the document; and
 - (b) the copy or counterpart includes the entire contents of the document; and
 - (c) the method used was either:
 - (i) as reliable as appropriate for the purpose for which the document was generated or communicated, in light of all the circumstances, including any relevant agreement; or

- (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

Copy or counterpart need not include other signatures

- (3C) For the purposes of paragraphs (3A)(b) and (3B)(b), a copy or counterpart of a document need not include:
- (a) the signature of another person signing the document; or
 - (b) any material included in the document to identify another person signing the document or to indicate another person's intention in respect of the contents of the document; or
 - (c) if a common seal is fixed to the document—the seal.

7 Before subsection 127(4)

Insert:

Other ways of executing documents not limited

8 At the end of subsection 129(5)

Add:

Note: Subsection 127(1) refers to the document being signed by various officers of the company. Subsections 127(3A) to (3C) set out the circumstances in which a person is taken to sign a document by signing a copy or counterpart of the document.

9 At the end of subsection 129(6)

Add:

Note: The circumstances in which a document is taken to have been executed by affixing the common seal of a company in accordance with subsection 127(2) is affected by subsection 127(2A). Subsection 127(2A) allows for a witness to observe by electronic means the affixing of the common seal of a company to a document. However, the witness must sign the document. The circumstances in which a person is taken to sign a document by signing a copy or counterpart of the document are set out in subsections 127(3A) to (3C).

10 Section 141 (table items 22 and 22A)

Repeal the items, substitute:

| | | |
|----|----------------------|---------|
| 22 | When notice is given | 249J(4) |
|----|----------------------|---------|

11 Section 248D

Repeal the section.

12 Paragraphs 249J(3)(c) to (cb)

Repeal the paragraphs, substitute:

- (c) by electronic means in accordance with section 253RA; or

13 Subsections 249J(3A) to (5)

Repeal the subsections, substitute:

When notice is given (replaceable rule—see section 135)

- (4) A notice of meeting is taken to be given:
 - (a) if it is sent by post—3 days after it is posted; or
 - (b) if it is sent by means of an electronic communication in accordance with subsection 253RA(1)—on the business day after it is sent; or
 - (c) if it is sent by giving the member information in accordance with subsection 253RA(2)—on the business day after the day on which the information is sent to the member.

14 Paragraph 249L(1)(a)

Repeal the paragraph, substitute:

- (a) set out:
 - (i) if there is only one location at which the members who are entitled to physically attend the meeting may do so—the date, time and place for the meeting; and
 - (ii) if there are 2 or more locations at which the members who are entitled to physically attend the meeting may do so—the date and time for the meeting at each location, and the main location for the meeting; and
 - (iii) if virtual meeting technology is to be used in holding the meeting—sufficient information to allow the members to participate in the meeting by means of the technology; and

15 Section 249R

Repeal the section, substitute:

249R Accessibility of meetings of members

- (1) A meeting of a company's members must be held:
 - (a) at a reasonable time; and
 - (b) if any of the company's members is entitled to physically attend the meeting—at a reasonable location or locations; and
 - (c) if virtual meeting technology is used in holding the meeting—in accordance with section 253Q.
- (2) For the purposes of paragraph (1)(a), a meeting is taken to be held at a reasonable time if any of the following applies:
 - (a) if there is only one location at which the members who are entitled to physically attend the meeting may do so—the meeting is held at a time that is reasonable at the location;
 - (b) if there are 2 or more locations at which the members who are entitled to physically attend the meeting may do so—the meeting is held at a time that is reasonable at the main location for the meeting as set out in the notice of the meeting;
 - (c) if the meeting is held using virtual meeting technology—the meeting is held at a time that is reasonable at the place where the meeting is taken to be held under section 253QA.

16 Section 249S

Repeal the section.

17 Subsection 249T(3)

Repeal the subsection, substitute:

- (3) A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to a meeting (the *resumed meeting*) at a later time.
- (3A) The directors may specify:
 - (a) the date and time of the resumed meeting; and
 - (b) if any of the company's members is entitled to physically attend the resumed meeting—the location or locations at which the members may do so; and

- (c) if virtual meeting technology is to be used in holding the meeting—sufficient information to allow the members to participate in the resumed meeting by means of the technology.
- (3B) If the directors do not specify one or more of the things mentioned in subsection (3A):
- (a) if the date is not specified—the meeting is adjourned to the same day in the next week; and
 - (b) if the time is not specified—the meeting is adjourned to the same time; and
 - (c) if any of the company’s members was entitled to physically attend the meeting and the location is not specified—the meeting is adjourned to the same location or locations as were specified for the original meeting; and
 - (d) if virtual meeting technology was used in holding the meeting and sufficient information to allow members to participate in the resumed meeting by means of the technology is not specified—participation in the resumed meeting by means of the technology must be provided in the same manner as set out in the notice for the original meeting.

18 Subsection 250B(3)

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

- (3) A company receives a document referred to in subsection (1):
 - (a) if the document is given by means of an electronic communication in accordance with section 253RA—when the document is received by the company; and
 - (b) otherwise—when the document is received at:
 - (i) the company’s registered office; or
 - (ii) a place specified for the purpose in the notice of meeting.

Note: For paragraph (a), if the document is given by means of an electronic communication, it is received by the company when it becomes capable of being retrieved by the company at an electronic address nominated by the company (see subsection 105A(4)).

19 Subsection 250BA(1)

Repeal the subsection, substitute:

- (1) In a notice of meeting for a meeting of the members of the company, the company must specify at least one of the following:
- (a) a place for the purposes of receipt of proxy appointments and proxy appointment authorities;
 - (b) sufficient information to allow members to comply with section 250B by means of an electronic communication.

20 Paragraph 250BB(1)(b)

Repeal the paragraph, substitute:

- (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must only vote on a poll; and

21 Subsection 250J(1)

Repeal the subsection, substitute:

- (1) A resolution put to the vote at a meeting of a company's members must be decided:
- (a) on a poll, if:
 - (i) virtual meeting technology is used in holding the meeting; or
 - (ii) a poll is demanded; or
 - (b) otherwise—on a show of hands.

22 Paragraph 252G(3)(c)

Repeal the paragraph, substitute:

- (c) by electronic means in accordance with section 253RA.

23 Subsection 252G(4)

Repeal the subsection, substitute:

When notice is given

- (4) Unless the scheme's constitution provides otherwise, a notice of meeting is taken to be given:
- (a) if it is sent by post—3 days after it is posted; or
 - (b) if it is sent by means of an electronic communication in accordance with subsection 253RA(1)—on the business day after it is sent; or

- (c) if it is sent by giving the member information in accordance with subsection 253RA(2)—on the business day after the day on which the information is sent to the member.

24 Paragraph 252J(a)

Repeal the paragraph, substitute:

- (a) set out:
- (i) if there is only one location at which the members who are entitled to physically attend the meeting may do so—the date, time and place for the meeting; and
 - (ii) if there are 2 or more locations at which the members who are entitled to physically attend the meeting may do so—the date and time for the meeting at each location, and the main location for the meeting; and
 - (iii) if virtual meeting technology is to be used in holding the meeting—sufficient information to allow the members to participate in the meeting by means of the technology; and

25 After paragraph 252J(d)

Insert:

; and (e) specify at least one of the following:

- (i) a place for the purposes of receipt of proxy appointments and proxy appointment authorities;
- (ii) sufficient information to allow members to comply with section 252Z by means of an electronic communication.

26 Section 252P

Repeal the section, substitute:

252P Accessibility of meetings of members

- (1) A meeting of a registered scheme's members must be held:
- (a) at a reasonable time; and
 - (b) if any of the registered scheme's members is entitled to physically attend the meeting—at a reasonable location or locations; and

- (c) if virtual meeting technology is used in holding the meeting—in accordance with section 253Q.
- (2) For the purposes of paragraph (1)(a), a meeting is taken to be held at a reasonable time if any of the following applies:
 - (a) if there is only one location at which the members who are entitled to physically attend the meeting may do so—the meeting is held at a time that is reasonable at the location;
 - (b) if there are 2 or more locations at which the members who are entitled to physically attend the meeting may do so—the meeting is held at a time that is reasonable at the main location for the meeting as set out in the notice of the meeting;
 - (c) if the meeting is held using virtual meeting technology—the meeting is held at a time that is reasonable at the place where the meeting is taken to be held under section 253QA.

27 Section 252Q

Repeal the section.

28 Subsection 252R(4)

Repeal the subsection, substitute:

- (4) A meeting of the scheme’s members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to a meeting (the *resumed meeting*) at a later time.
- (4A) The responsible entity may specify:
 - (a) the date and time of the resumed meeting; and
 - (b) if any of the scheme’s members is entitled to physically attend the resumed meeting—the location or locations at which the members may do so; and
 - (c) if virtual meeting technology is to be used in holding the meeting—sufficient information to allow members to participate in the resumed meeting by means of the technology.
- (4B) If the responsible entity does not specify one or more of the things mentioned in subsection (4A):

- (a) if the date is not specified—the meeting is adjourned to the same day in the next week; and
- (b) if the time is not specified—the meeting is adjourned to the same time; and
- (c) if any of the scheme’s members was entitled to physically attend the meeting and the location is not specified—the meeting is adjourned to the same location or locations as were specified for the original meeting; and
- (d) if virtual meeting technology was used in holding the meeting and sufficient information to allow the scheme’s members to participate in the meeting by means of the technology is not specified—participation in the resumed meeting by means of the technology must be provided in the same manner as set out in the notice for the original meeting.

29 Subsections 252Z(3A) and (4)

Repeal the subsections, substitute:

Receipt of documents

- (4) A responsible entity receives an appointment authority:
 - (a) if the appointment authority is given by means of an electronic communication in accordance with section 253RA—when the appointment authority is received by the responsible entity; and
 - (b) otherwise—when the appointment authority is received at:
 - (i) the responsible entity’s registered office; or
 - (ii) a place specified for the purpose in the notice of meeting.

Note: For paragraph (a), if the document is given by means of an electronic communication, it is received by the company when it becomes capable of being retrieved by the company at an electronic address nominated by the company (see subsection 105A(4)).

30 Subsection 253J(2)

Repeal the subsection, substitute:

- (2) Any other resolution put to the vote at a meeting of the scheme’s members must be decided:
 - (a) on a poll, if:

(i) virtual meeting technology is used in holding the meeting and the scheme's constitution does not provide otherwise; or

(ii) a poll is demanded; or

(b) otherwise—on a show of hands.

The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by members entitled to vote on the resolution.

31 After Part 2G.4

Insert:

Part 2G.5—Virtual meetings, electronic communication of documents, and recording and keeping of minute books

Division 1—Interpretation

253P References to Chapter 2G meetings

In this Part:

Chapter 2G meeting means:

(a) a meeting of a company's members; or

(b) a meeting of the directors of a company (including meetings of a committee of directors); or

(c) a meeting of a registered scheme's members.

Division 2—Virtual meetings

253Q Virtual meetings

(1) Virtual meeting technology may be used in holding a Chapter 2G meeting, provided the technology gives the persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate without being physically present in the same place.

(2) To avoid doubt:

- (a) a reasonable opportunity to participate includes a reasonable opportunity to exercise a right to speak; and
 - (b) a person may elect to exercise a right to speak (including a right to ask questions) orally rather than in writing.
- (3) All persons so participating in the meeting are taken for all purposes to be present in person at the meeting while so participating.
- (4) All persons so participating in the meeting who are entitled to vote at the meeting:
- (a) must be given the opportunity to participate in the vote in real time; and
 - (b) may be given the opportunity to record a vote in advance of the meeting at the election of the voter.
- (5) If:
- (a) virtual meeting technology is used in holding a Chapter 2G meeting; and
 - (b) a document is required or permitted to be tabled at the meeting;
- the document is taken to have been tabled at the meeting if the document is:
- (c) given to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
 - (d) made accessible to the persons attending the meeting (whether physically or using virtual meeting technology) during the meeting.

253QA Place and time of virtual meetings

- (1) This section applies in relation to a Chapter 2G meeting if virtual meeting technology is used in holding the meeting.
- (2) If any of the persons entitled to attend the meeting is entitled to physically attend the meeting:
 - (a) the place for the meeting is taken to be:
 - (i) if there are 2 or more locations at which persons who are entitled to physically attend the meeting may do

- so—the main location for the meeting as set out in the notice of the meeting; and
 - (ii) otherwise—the location where the persons may physically attend the meeting; and
 - (b) the time for the meeting is taken to be the time at the place for the meeting.
- (3) If none of the persons entitled to attend the meeting is entitled to physically attend the meeting:
- (a) the place for the meeting is taken to be the address of:
 - (i) if the meeting is a meeting of a company’s members or of the directors of a company—the registered office of the company; or
 - (ii) if the meeting is a meeting of a registered scheme’s members—the registered office of the responsible entity for the registered scheme; and
 - (b) the time for the meeting is taken to be the time at the place for the meeting.

Division 3—Electronic communication and signatures

253R Documents to which this Division applies

This Division applies to:

- (a) any document that is required or permitted to be given to a person (the *recipient*) under this Act that relates to a Chapter 2G meeting, including but not limited to the following:
 - (i) a request in relation to such a meeting;
 - (ii) a notice of such a meeting;
 - (iii) a notice of a resolution or record of a resolution;
 - (iv) a statement in relation to such a meeting, or in relation to a matter to be considered at such a meeting;
 - (v) the appointment of a proxy in relation to such a meeting, or any other document in relation to a proxy;
 - (vi) a question for, or response to a question by, an auditor of the company;
 - (vii) minute books; and

- (b) any document that is required or permitted to be given to a person (the *recipient*) under this Act that relates to a resolution to be considered without a meeting; and
- (c) any document:
 - (i) that relates to a Chapter 2G meeting, or to a resolution to be considered without a meeting; and
 - (ii) that is required to be signed by a person under this Act.

253RA Giving the document

- (1) The document may be given to the recipient by means of an electronic communication.
 - (2) The document may be given by giving the recipient (by means of an electronic communication or otherwise) sufficient information to allow the recipient to access the document electronically.
 - (3) However, an electronic communication or electronic access may only be used if, at the time the electronic communication is used or information about the electronic access is given:
 - (a) it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference; and
 - (b) an election by the recipient to receive documents in hard copy only is not in force in relation to the document under section 253RB (for a document relating to a company) or section 253RC (for a document relating to a registered scheme).
- Note: An election under section 253RB or 253RC can only be made if the recipient is a member of the company or registered scheme.
- (4) This section does not apply to a document that is required or permitted to be given to ASIC.

253RB Elections to receive documents in hard copy only— companies

- (1) A member of a company may elect to receive documents to which this Division applies in hard copy only.
- (2) The election is in force in relation to those documents during the period:

- (a) beginning on the day on which the member gives the company notice in writing of the election; and
 - (b) ending on the day on which the member gives the company notice in writing withdrawing the election.
- (3) However, the election is not in force in relation to a document if:
- (a) both of the following are satisfied:
 - (i) the document relates to a Chapter 2G meeting;
 - (ii) notice in writing of the election is given to the company on or after the day that is 10 business days immediately before the day on which the minimum notice period for the meeting under section 249H or 249HA begins; or
 - (b) both of the following are satisfied:
 - (i) the document relates to a resolution to be considered without a meeting;
 - (ii) notice in writing of the election is given to the company on or after the day the document is given to the member.

253RC Elections to receive documents in hard copy only—registered schemes

- (1) A member of a registered scheme may elect to receive documents to which this Division applies in hard copy only.
- (2) The election is in force in relation to those documents during the period:
 - (a) beginning on the day on which the member gives the responsible entity for the registered scheme notice in writing of the election; and
 - (b) ending on the day on which the member gives the responsible entity for the registered scheme notice in writing withdrawing the election.
- (3) However, the election is not in force in relation to a document if:
 - (a) both of the following are satisfied:
 - (i) the document relates to a Chapter 2G meeting;
 - (ii) notice in writing of the election is given to the responsible entity for the registered scheme on or after the day that is 10 business days immediately before the

- day on which the minimum notice period for the meeting under section 252F begins; or
- (b) both of the following are satisfied:
- (i) the document relates to a resolution to be considered without a meeting;
 - (ii) notice in writing of the election is given to the responsible entity for the registered scheme on or after the day the document is given to the member.

253RD Signing the document

- (1) If the document is required to be signed by a person, that requirement is taken to have been met in relation to the electronic communication of the document, or access to the document electronically, if:
- (a) a method is used to identify the person and to indicate the person's intention to sign a copy or counterpart of the document; and
 - (b) the copy or counterpart includes the entire contents of the document; and
 - (c) the method used was either:
 - (i) as reliable as appropriate for the purpose for which the document was generated or communicated, in light of all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.
- (2) For the purposes of paragraph (1)(b), a copy or counterpart of a document need not include:
- (a) the signature of another person signing the document; or
 - (b) any material included in the document to identify another person signing the document or to indicate another person's intention in respect of the contents of the document.
- (3) If:
- (a) under this Act, the signature of a person is required on a document; and

- (b) the person signs the document in accordance with subsection (1); and
- (c) the person submits the document for lodgement;
ASIC must not refuse to receive or register the document on the basis that the document has not been signed.

Division 4—Recording and keeping of minute books

253S Electronic recording and keeping of minute books

- (1) If information is required to be recorded in a minute book, the information may be recorded in electronic form if, at the time of the recording of the information, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference.
- (2) If a minute book is required to be kept at a place, the requirement is taken to be satisfied if:
 - (a) an electronic form of the minute book is open for inspection at the place in accordance with this Act; and
 - (b) having regard to all the relevant circumstances at the time of the generation of the electronic form of the minute book, the method of generating the electronic form of the minute book provided a reliable means of assuring the maintenance of the integrity of the information contained in the minute book; and
 - (c) at the time of the generation of the electronic form of the minute book, it was reasonable to expect that the information contained in the electronic form of the minute book would be readily accessible so as to be useable for subsequent reference.
- (3) For the purposes of subsection (2), the integrity of information contained in a minute book is maintained if, and only if, the information has remained complete and unaltered, apart from:
 - (a) the addition of any endorsement; or
 - (b) any immaterial change;which arises in the normal course of communication, storage or display.

32 Subsection 1322(3AA) (note)

Repeal the note, substitute:

Note: Under paragraph 249J(3)(c), a company may, in certain circumstances, give a member notice of a meeting by means of an electronic communication, or by giving the member sufficient information to allow the member to access the notice electronically.

33 Subsection 1322(3A)

Repeal the subsection, substitute:

(3A) If:

- (a) a meeting of members is held at 2 or more locations, or virtual meeting technology is used in holding the meeting; and
- (b) a member does not have a reasonable opportunity to participate in the meeting or a proceeding at the meeting; the meeting or proceeding will only be invalid on that ground if:
- (c) the Court is of the opinion that:
 - (i) a substantial injustice has been caused or may be caused; and
 - (ii) the injustice cannot be remedied by any order of the Court; and
- (d) the Court declares the meeting or proceeding invalid.

Part 2—Other amendments

Corporations Act 2001

33A In the appropriate position in Chapter 2G

Insert:

Part 2G.6—Exceptional circumstances

253T Exceptional circumstances—AGM

- (1) A public company is taken to comply with subsections 250N(1) and (2) in relation to an AGM if:
 - (a) the company is in a class of companies specified in a determination under subsection (2); and
 - (b) the company holds the AGM within the period of extension specified in the determination.
- (2) ASIC may, by legislative instrument, make a determination specifying a class of public companies, if ASIC considers that it may be unreasonable to expect the companies in the specified class to hold AGMs within the time required under section 250N because of a situation that is beyond the control of those companies.
- (3) The determination must specify a period of extension of that time.
- (4) The determination may be subject to specified conditions applying to public companies in the specified class. A company to which a condition specified in the determination applies must comply with the condition. The Court may order the company to comply with the condition in a specified way.
- (5) Unless revoked earlier, the determination is repealed at the end of 12 months after the day on which it commences.

253TA Exceptional circumstances—virtual meetings

- (1) An entity may hold a meeting of its members, using virtual meeting technology only (even if this is not required or permitted by the entity's constitution expressly), if:
 - (a) the entity is specified in a determination under subsection (2); or
 - (b) the entity is in a class of entities specified in a determination under subsection (2).
- (2) ASIC may make a determination specifying an entity, or a class of entities, if ASIC considers that it may be unreasonable to expect the specified entity, or entities in the specified class, to hold meetings wholly or partially at one or more physical venues because of a situation that is beyond the control of the entity, or the entities in the class.
- (3) The determination is:
 - (a) a notifiable instrument, if it specifies an entity; or
 - (b) a legislative instrument, if it specifies a class of entities.
- (4) The determination may be subject to specified conditions applying to the specified entity, or to entities in the specified class. An entity to which a condition specified in the determination applies must comply with the condition. The Court may order the entity to comply with the condition in a specified way.
- (5) Unless revoked earlier, the determination is repealed at the end of 12 months after the day on which it commences.
- (6) A reference in this section to an entity is a reference to any of the following:
 - (a) a company;
 - (b) a registered scheme.

33B After section 1344

Insert:

1345 Exceptional circumstances—giving documents

- (1) Subsections (2) to (4) apply in relation to a document that is required or permitted under this Act to be given by an entity to another entity (the *recipient*) if:
 - (a) the entity giving the document is specified, or is in a class of entities specified, in a determination under subsection (5); and
 - (b) the document is specified, or is in a class of documents specified, in the determination.

Giving document by electronic communication etc.

- (2) If the determination specifies that the document, or documents in that class, may be given in accordance with this subsection, then the document may be given:
 - (a) by means of an electronic communication; or
 - (b) by giving the recipient (by means of an electronic communication or otherwise) sufficient information to allow the recipient to access the document electronically.
- (3) However, electronic communication or electronic access may only be used if, at the time the electronic communication is used or information about the electronic access is given, it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference.

Extension of time

- (4) If the requirement or permission mentioned in subsection (1) is for the document to be given within a particular time, the document is taken to have been given within that time if:
 - (a) the determination specifies a period of extension of that time that applies to the giving of the document by the entity to the recipient; and
 - (b) the specified period of extension starts after the determination is made; and
 - (c) the document is given by the entity to the recipient within the specified period of extension.

ASIC may make determination

- (5) ASIC may make a determination specifying:
 - (a) an entity, or a class of entities; and
 - (b) a document, or a class of documents, required or permitted to be given under this Act (including a class that is any such document); and
 - (c) one or more matters mentioned in subsections (6) and (7).
- (6) ASIC may specify that the document, or documents in that class, may be given in accordance with subsection (2) (giving document by electronic communication etc.), if ASIC considers that it may be unreasonable to expect the specified entity, or entities in the specified class, to give the document, or documents in the specified class, in a physical form because of a situation that is beyond the control of the entity, or the entities in the class.
- (7) To the extent that the document, or documents in that class, are required or permitted under the Act to be given by the entity, or the entities in the class, within a particular time (the *original time*), ASIC may specify a period of extension of that time applying in relation to the giving of the document or documents in that class, if ASIC considers that it may be unreasonable to expect the entity, or entities in the class, to give the document, or documents in the class, within the original time, because of a situation that is beyond the control of the entity, or the entities in the class.

Other matters relating to determination

- (8) A determination under subsection (5) is:
 - (a) a notifiable instrument, if it specifies an entity; or
 - (b) a legislative instrument, if it specifies a class of entities.
- (9) The determination may be subject to specified conditions applying to the specified entity, or to entities in the specified class. An entity to which a condition specified in the determination applies must comply with the condition. The Court may order the entity to comply with the condition in a specified way.
- (10) Unless revoked earlier, the determination is repealed at the end of 12 months after the day on which it commences.

Schedule 1 Virtual meetings and electronic communication of documents
Part 2 Other amendments

- (11) This section has effect despite any election (however described) by an entity to be given a document in a physical form.

Part 3—Application and transitional provisions

Corporations Act 2001

34 In the appropriate position in Chapter 10

Insert:

Part 10.52—Application and transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021

1679 Definitions

In this Part:

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

commencement day means the day on which Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* commences.

1679A Application—virtual meetings and electronic communications

- (1) The amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* apply in relation to:
 - (a) a Chapter 2G meeting; and
 - (b) a document that relates to a Chapter 2G meeting that is required or permitted to be given to a person under this Act; if:
 - (c) the meeting is held on or after the commencement day; and
 - (d) the document is given on or after the commencement day.
- (2) The amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* apply in relation to

any document that is required or permitted to be given to a person under this Act that relates to a resolution to be considered without a Chapter 2G meeting if the document is given on or after the commencement day.

1679C Application—recording and keeping of minute books

The amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* apply in relation to minute books kept before, on or after the commencement day.

1679D Application—execution of documents

Sections 127 and 129, as amended by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*, apply in relation to a document that is executed on or after the commencement day.

1679E Application of COVID-19 instrument

The modifications of this Act made by the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* do not apply in relation to:

- (a) any of the following meetings that is held on or after the commencement day:
 - (i) a meeting of a company's members;
 - (ii) a meeting of the directors of a company (including meetings of a committee of directors);
 - (iii) a meeting of a registered scheme's members; or
- (b) a document that is executed by a company on or after the commencement day.

1679F Amendments made by Part 1 do not apply on and after 1 April 2022

- (1) This Act has effect on and after 1 April 2022 as if the amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* had not been made.

- (2) To avoid doubt, nothing in this section affects the validity of anything that is done, or not done, in reliance on the Act as in force before 1 April 2022.

Schedule 2—Continuous disclosure obligations

Part 1—Main amendments

Australian Securities and Investments Commission Act 2001

1 At the end of section 12DA

Add:

- (3) If a person engages in conduct that:
- (a) does not contravene subsection 674A(2) of the Corporations Act, but would contravene that subsection if paragraph 674A(2)(d) of the Corporations Act contained the same text as paragraph 674(2)(d) of the Corporations Act; or
 - (b) does not contravene subsection 675A(2) of the Corporations Act, but would contravene that subsection if paragraph 675A(2)(b) of the Corporations Act contained the same text as paragraph 675(2)(b) of the Corporations Act;
- the person's engaging in that conduct does not contravene subsection (1) of this section.

Note: The subsections mentioned in paragraphs (a) and (b) deal with continuous disclosure of information by disclosing entities.

- (4) For the purposes of subsection (3), a person engages in conduct that contravenes a provision even if engaging in the conduct does not constitute an offence, or lead to a liability, because of the availability of a defence.

Corporations Act 2001

2 Section 674 (heading)

Repeal the heading, substitute:

674 Continuous disclosure—listed disclosing entity bound by a disclosure requirement in market listing rules—reasonable person’s expectations

3 Paragraph 674(2)(c)

Repeal the paragraph, substitute:

- (c) the information is not generally available; and
- (d) a reasonable person would expect the information, if it were generally available, to have a material effect on the price or value of ED securities of the entity;

4 Subsection 674(2) (note 2)

Repeal the note.

5 Subsections 674(2A) and (2B)

Repeal the subsections.

6 Subsection 674(5) (note)

Repeal the note, substitute:

- Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- Note 2: This subsection is not a civil penalty provision, as it is not listed in the table in subsection 1317E(3).

7 After section 674

Insert:

674A Continuous disclosure—listed disclosing entity bound by a disclosure requirement in market listing rules—knowledge, recklessness or negligence

- (1) Subsection (2) applies to a listed disclosing entity if provisions of the listing rules of a listing market in relation to that entity require the entity to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market.
- (2) If:

Schedule 2 Continuous disclosure obligations
Part 1 Main amendments

- (a) this subsection applies to a listed disclosing entity; and
- (b) the entity has information that those provisions require the entity to notify to the market operator; and
- (c) the information is not generally available; and
- (d) the entity knows, or is reckless or negligent with respect to whether, the information would, if it were generally available, have a material effect on the price or value of ED securities of the entity;

the entity must notify the market operator of that information in accordance with those provisions.

Note 1: Except for paragraph (d), this subsection is identical to subsection 674(2).

Note 2: This subsection is a financial services civil penalty provision (see section 1317E). As a result, compensation orders are available for contraventions of this subsection (see section 1317HA). For relief from liability relating to this subsection, see section 1317S.

Note 3: This subsection does not create an offence (see subsection 1311(1A)).

- (3) A person who is involved in a listed disclosing entity's contravention of subsection (2) contravenes this subsection.

Note 1: This subsection is a financial services civil penalty provision (see section 1317E). As a result, compensation orders are available for contraventions of this subsection (see section 1317HA). For relief from liability relating to this subsection, see section 1317S.

Note 2: Section 79 defines *involved*.

- (4) A person does not contravene subsection (3) if the person proves that the person:

- (a) took all steps (if any) that were reasonable in the circumstances to ensure that the listed disclosing entity complied with its obligations under subsection (2); and
- (b) after doing so, believed on reasonable grounds that the listed disclosing entity was complying with its obligations under that subsection.

- (5) For the purposes of this section, subsections 674(3) and (3A) apply as if each reference in those subsections to subsection 674(2) were replaced by a reference to subsection (2) of this section.

- (6) Nothing in subsection (2) is intended to affect or limit the situations in which action can be taken in respect of a failure to comply with provisions referred to in subsection (1).
- (7) Subsection 1317QB(1) (state of mind) does not apply in relation to subsections (2) and (3) of this section.

Note: In relation to subsection (3) of this section, see also subsection 1317QB(2).

8 Section 675 (heading)

Repeal the heading, substitute:

675 Continuous disclosure—other disclosing entities—reasonable person’s expectations

9 Subsection 675(2)

Omit “the disclosing entity becomes aware of information”.

10 Paragraphs 675(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the disclosing entity becomes aware of information that is not generally available; and
- (b) a reasonable person would expect the information, if it were generally available, to have a material effect on the price or value of ED securities of the entity; and

11 Subsection 675(2) (note 2)

Repeal the note.

12 Subsections 675(2A) and (2B)

Repeal the subsections.

13 After section 675

Insert:

675A Continuous disclosure—other disclosing entities—knowledge, recklessness or negligence

- (1) This section applies to:

Schedule 2 Continuous disclosure obligations
Part 1 Main amendments

- (a) a listed disclosing entity if:
 - (i) there is only one listing market in relation to the entity and the listing rules of that market do not contain provisions of a kind referred to in subsection 674A(1); or
 - (ii) there is more than one listing market in relation to the entity and none of those markets have listing rules that contain provisions of a kind referred to in subsection 674A(1); or
 - (b) an unlisted disclosing entity.
- (2) If:
- (a) the disclosing entity becomes aware of information that is not generally available; and
 - (b) the entity knows, or is reckless or negligent with respect to whether, the information would, if it were generally available, have a material effect on the price or value of ED securities of the entity; and
 - (c) either:
 - (i) if those securities are not managed investment products or foreign passport fund products—the information is not required to be included in a supplementary disclosure document or a replacement disclosure document in relation to the entity; or
 - (ii) if those securities are managed investment products or foreign passport fund products—the information has not been included in a Product Disclosure Statement, a Supplementary Product Disclosure Statement, or a Replacement Product Disclosure Statement, a copy of which has been lodged with ASIC; and
 - (d) regulations made for the purposes of this paragraph do not provide that disclosure under this section is not required in the circumstances;

the disclosing entity must, as soon as practicable, lodge a document with ASIC containing the information.

Note 1: Except for paragraph (b), this subsection is identical to subsection 675(2).

Note 2: This subsection is a financial services civil penalty provision (see section 1317E). As a result, compensation orders are available for

contraventions of this subsection (see section 1317HA). For relief from liability relating to this subsection, see section 1317S.

Note 3: This subsection does not create an offence (see subsection 1311(1A)).

Note 4: This subsection has an extended operation in relation to disclosing entities that have made recognised offers of securities under Chapter 8 (see section 1200K).

(3) A person who is involved in a disclosing entity's contravention of subsection (2) contravenes this subsection.

Note 1: This subsection is a financial services civil penalty provision (see section 1317E). As a result, compensation orders are available for contraventions of this subsection (see section 1317HA). For relief from liability relating to this subsection, see section 1317S.

Note 2: Section 79 defines *involved*.

(4) A person does not contravene subsection (3) if the person proves that the person:

- (a) took all steps (if any) that were reasonable in the circumstances to ensure that the disclosing entity complied with its obligations under subsection (2); and
- (b) after doing so, believed on reasonable grounds that the disclosing entity was complying with its obligations under that subsection.

(5) For the purposes of this section, subsections 675(3) and (4) apply as if each reference in those subsections to subsection 675(2) were replaced by a reference to subsection (2) of this section.

(6) Subsection 1317QB(1) (state of mind) does not apply in relation to subsections (2) and (3) of this section.

Note: In relation to subsection (3) of this section, see also subsection 1317QB(2).

14 Section 676 (heading)

Repeal the heading, substitute:

676 When information is generally available

15 Subsection 676(1)

Omit "674 and 675", substitute "674, 674A, 675 and 675A".

16 Section 677 (heading)

Repeal the heading, substitute:

677 Material effect on price or value

17 Section 677

Before “For the purposes of sections 674 and 675”, insert “(1)”.

18 At the end of section 677

Add:

- (2) For the purposes of sections 674A and 675A:
- (a) an entity knows information would have a material effect on the price or value of ED securities of the entity if the entity knows the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the ED securities; and
 - (b) an entity is reckless or negligent with respect to whether information would have a material effect on the price or value of ED securities of the entity if the entity is reckless or negligent with respect to whether the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the ED securities.

19 Subsection 1041H(3)

Omit “Conduct”, substitute “If a person engages in conduct”.

20 Subsection 1041H(3)

Omit all the words from and including “does not contravene” to and including “availability of a defence”, substitute “the person’s engaging in that conduct does not contravene subsection (1) of this section”.

21 At the end of section 1041H

Add:

- (4) If a disclosing entity engages in conduct that:

- (a) does not contravene subsection 674A(2), but would contravene that subsection if paragraph 674A(2)(d) contained the same text as paragraph 674(2)(d); or
 - (b) does not contravene subsection 675A(2), but would contravene that subsection if paragraph 675A(2)(b) contained the same text as paragraph 675(2)(b); or
- the disclosing entity's engaging in that conduct does not contravene subsection (1) of this section.

Note: The subsections mentioned in paragraphs (a) and (b) deal with continuous disclosure of information by disclosing entities.

- (5) For the purposes of subsections (3) and (4), a person or disclosing entity engages in conduct that contravenes a provision even if engaging in the conduct does not constitute an offence, or lead to a liability, because of the availability of a defence.

22 Subsection 1317E(3) (table item dealing with subsections 674(2), 674(2A), 675(2) and 675(2A))

Repeal the item, substitute:

subsections 674A(2), 674A(3), 675A(2) and 675A(3) continuous disclosure—knowledge, recklessness or negligence financial services

23 Subsection 1325(7) (paragraph (c) of the definition of section 1325 order provision)

After “a provision of Chapter 6CA”, insert “(other than sections 674 and 675)”.

Part 2—Consequential amendments

Australian Securities and Investments Commission Act 2001

24 Subparagraph 127(2D)(b)(ii)

Omit “674 and 675”, substitute “674, 674A, 675 and 675A”.

Corporations Act 2001

25 Section 9 (paragraph (a) of the definition of *continuous disclosure notice*)

Omit “subsection 674(1)”, substitute “subsections 674(1) and 674A(1)”.

26 Section 9 (paragraph (b) of the definition of *continuous disclosure notice*)

Omit “section 675”, substitute “section 675 or 675A”.

27 Subsection 111AP(1)

Omit “674 and 675”, substitute “674, 674A, 675 and 675A”.

28 Paragraph 111AR(1)(d)

Omit “674 and 675”, substitute “674, 674A, 675 and 675A”.

29 Paragraph 708AA(3)(c)

Omit “674 or 675”, substitute “674, 674A, 675 or 675A”.

30 Subparagraph 708AA(7)(c)(ii)

Omit “section 674”, substitute “sections 674 and 674A”.

31 Paragraph 708A(2)(c)

Omit “674 or 675”, substitute “674, 674A, 675 or 675A”.

32 Subparagraph 708A(6)(d)(ii)

Omit “section 674”, substitute “sections 674 and 674A”.

33 Paragraph 713(6)(aa)

Omit “subsection 674(2) or 675(2)”, substitute “subsection 674(2), 674A(2), 675(2) or 675A(2)”.

34 Paragraph 713A(23)(c)

Omit “674 or 675”, substitute “674, 674A, 675 or 675A”.

35 Paragraph 1012DAA(3)(b)

Omit “674 or 675”, substitute “674, 674A, 675 or 675A”.

36 Paragraph 1012DAA(3)(ba)

Omit “674 or 675”, substitute “674, 674A, 675 or 675A”.

37 Subparagraph 1012DAA(7)(d)(ii)

Omit “section 674 as it”, substitute “sections 674 and 674A as they”.

38 Subparagraph 1012DAA(7)(da)(ii)

Omit “section 674 as it applies”, substitute “sections 674 and 674A as they apply”.

39 Paragraph 1012DA(2)(b)

Omit “674 or 675”, substitute “674, 674A, 675 or 675A”.

40 Paragraph 1012DA(6)(e)

Omit “section 674”, substitute “sections 674 and 674A”.

41 Subparagraph 1013F(2)(d)(ii)

Omit “674 and 675”, substitute “674, 674A, 675 and 675A”.

42 Subparagraph 1013FA(3)(a)(ii)

Omit “subsection 674(2) or 675(2)”, substitute “subsection 674(2), 674A(2), 675(2) or 675A(2)”.

43 Subsection 1017B(2) (note 1)

Omit “(sections 674-677)”.

44 Section 1200K

Omit “section 675 also has the operation it would have if paragraph 675(2)(c)”, substitute “sections 675 and 675A also have the operation they would have if paragraphs 675(2)(c) and 675A(2)(c)”.

45 Paragraph 1317DAA(2)(e)

Repeal the paragraph.

46 Paragraph 1317DAA(3)(e)

Repeal the paragraph.

47 At the end of section 1317DAA

Add:

- (4) For the purposes of this Part, in determining whether a disclosing entity has contravened subsection 674(2) or 675(2), treat the offences created by those subsections as being offences of strict liability.

48 Subsection 1317DAB(1)

Omit “as an alternative to proceedings for civil penalties under Part 9.4B”.

49 Paragraph 1317DAE(1)(f)

Repeal the paragraph.

50 Paragraph 1317DAE(3)(d)

Repeal the paragraph, substitute:

- (d) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2) (as those subsections applied before the commencement of Part 1 of Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*); or

51 Paragraph 1317DAE(5)(b)

Repeal the paragraph, substitute:

(b) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2) (as those subsections applied before the commencement of Part 1 of Schedule 2 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*); or

52 Subsection 1317DAG(2)

Repeal the subsection.

53 Subsection 1317DAG(3)

Omit “no other proceedings (whether criminal or civil)”, substitute “no proceedings”.

54 Paragraph 1317DAI(6)(d)

Repeal the paragraph.

Part 3—Application provisions

Corporations Act 2001

55 In the appropriate position in Chapter 10

Insert:

Part 10.56—Application and transitional provisions relating to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021

1683 Definitions

In this Part:

amending Act means the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

1683A Application

The amendments made by Parts 1 and 2 of Schedule 2 to the amending Act to apply in relation to conduct that is engaged in on or after the commencement of those Parts.

1683B Review of operation of laws

- (1) The Minister must cause a review of the operation of the amendments made by Parts 1 and 2 of Schedule 2 to the amending Act to be conducted by an independent expert within 6 months after the second anniversary of the commencement of this section.
- (2) The person who conducts the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Recommendations

- (4) The report may set out recommendations to the Commonwealth Government.
- (5) If the report sets out one or more recommendations to the Commonwealth Government, the report must set out the reasons for those recommendations.

Government response to recommendations

- (6) If the report sets out one or more recommendations to the Commonwealth Government, as soon as practicable, and in any event within 3 months, after the report is first tabled in a House of the Parliament, the Minister must cause:
 - (a) a statement setting out the Commonwealth Government's response to each of the recommendations to be prepared; and
 - (b) the statement to be published on the Department's website.

1683C Amendments made by Schedule 2 to the amending Act cease to have effect if review of operation of laws is not conducted

- (1) This section applies if the Minister:
 - (a) fails to cause a review to be conducted in accordance with subsection 1683B(1) within the period required by that subsection; or
 - (b) is given a written report of a review conducted in accordance with subsection 1683B(1), but fails to cause a copy of the report to be tabled in each House of the Parliament within the period required by subsection 1683B(3); or
 - (c) is given a written report of a review conducted in accordance with subsection 1683B(1) that sets out one or more recommendations to the Commonwealth Government, but fails to cause a statement to be published on the Department's website within the period required by subsection 1683B(6).
- (2) This Act and the ASIC Act have effect, on or after the day mentioned in subsection (3), as if the amendments made by Parts 1, 2 and 4 of Schedule 2 to the amending Act had not been made.

- (3) The day (the *sunsetting day*) is:
- (a) the day after the end of the period referred to in the applicable paragraph of subsection (1), unless paragraph (b) of this subsection applies; or
 - (b) if there is more than one applicable paragraph in subsection (1)—the earliest day determined under paragraph (a) of this subsection for each of those paragraphs.
- (4) To avoid doubt, nothing in this section affects the validity of anything that is done, or not done, in reliance on this Act or the ASIC Act as in force before the sunsetting day.

Part 4—Contingent amendments

Corporations Act 2001

56 Subparagraph 675A(2)(c)(ii)

Omit “ASIC”, substitute “the Registrar”.

57 Subsection 675A(2)

Omit “ASIC containing the information.”, substitute “the Registrar containing the information. The notice must meet any requirements of the data standards.”.

*[Minister’s second reading speech made in—
House of Representatives on 17 February 2021
Senate on 18 March 2021]*

(14/21)
