

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Corporations (Coronavirus Economic Response) Determination (No. 1) 2020

Section 1362A of the *Corporations Act 2001* (the Act) provides that the Minister may, by legislative instrument, exempt specified classes of persons from the operation of specified provisions of the Act or *Corporations Regulations 2001* (the Regulations). Section 1362A of the Act also provides that the Minister may, by legislative instrument modify provisions of the Act or the Regulations in relation to specified classes of persons.

The purpose of the instrument-making power is to provide the Minister with a temporary power to provide short-term regulatory relief to those who are unable to meet their obligations under the Act or the Regulations due to the Coronavirus, and short-term regulatory changes to facilitate continuation of business or mitigate the economic impact of Coronavirus.

The *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (the Determination) deals with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic. The Treasurer is making this Determination to facilitate alternative methods that mean businesses can keep operating consistently with public health requirements. The Determination gives companies, responsible entities, external administrators and other classes of persons certainty about how they can meet their legal obligations for the next six months while the Determination is in effect.

The Determination ensures that companies and other entities that are required to or wish to hold a meeting, such as an Annual General Meeting (AGM), may do so using technology rather than face-to-face meetings. The Determination enables a quorum, votes, notices and the asking of questions to be facilitated electronically. The Determination also allows for information required for the meeting to be circulated and accessed electronically.

The Determination alters the operation of section 127 of the Act to give certainty that when company officers sign a document electronically (including an electronic document), the document has been validly executed.

The Determination has effect for six months from its commencement.

In making this Determination, the Treasurer is satisfied that it would be unreasonable for persons to comply with the unmodified provisions due to the impact of the Coronavirus, and that the modifications to the Act set out in this Determination are necessary or appropriate to facilitate the continuation of business or mitigate the economic impact of the Coronavirus.

An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

A more detailed explanation of the Determination is at [Attachment A](#).

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020

Section 1 – Name

The title of the Determination is the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (the Determination).

Section 2 – Commencement

This Determination takes effect on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

The Determination is made under section 1362A of the Act.

Section 4 – Interpretation

In this Determination **the Act** means the *Corporations Act 2001* and **the regulations** means the *Corporations Regulations 2001*.

Section 5 – Provisions about meetings

Section 5 modifies any provision of the Act or the Regulations that requires or permits a meeting to be held, or deals with giving a notice of a meeting or the conduct of a meeting.

Section 5 is intended to allow entities who are required or permitted to hold meetings to hold those meetings remotely as virtual meetings, instead of in person, while public health restrictions are in place.

Many entities may seek or be required to hold meetings over this period, including AGMs and creditors' meetings. The modifications in section 5 allow them to do so using one or more technologies to enable participation without needing to be physically present at a venue.

Section 5 modifies provisions of the Act so that a requirement for physical attendance for purposes such as achieving a quorum may be met using technology. All persons participating in the meeting will be taken to be present at the meeting while participating.

Section 5 also modifies a requirement to allow those attending the meeting to speak, so that this can be done using technology. A proxy may also be appointed using technology.

Section 5 modifies requirements about registering a vote. A show of hands may not be used where a meeting is being facilitated using technology. Votes must be taken by a poll and each person entitled to vote must be given the opportunity to vote in real time and if practical ahead of the meeting.

Many meetings governed by the Act and the Regulations require notices to be sent in writing where a member has not provided another means such as an email address. Section 5 modifies those requirements to enable notices to be sent to all those entitled to attend using one or more technologies, including where recipients have not provided an email address. In that instance, an entity would meet the requirement to give notice and provide documents (such as various reports or resolutions to be put to the meeting) through a letter or postcard setting out where the recipient could view the information online and download it.

Section 5 imposes conditions on entities accessing the relief including that, when giving notice of the meeting, the person required to give the notice must include information about how persons entitled to attend and participate in the meeting can do so (including by proxy). The notice must explain how participants can vote and ask questions and must include any other information they need to know to participate using technology.

If a company, responsible entity or external administrator has already sent out a notice of an AGM or other meeting before this Determination came into force, that person must issue another notice at least seven days before the meeting with information about how to participate in the meeting electronically.

The Determination also requires the person conducting the meeting to treat a proxy in the same way the person who appointed the proxy would be treated if that person was attending the meeting.

The modifications included in section 5 and described above also affect the operation of the constitution of a company or registered scheme, or to any other arrangement that requires or permits a meeting to be held, deals with giving a notice of a meeting or the conduct of a meeting.

Section 6

Section 6 modifies section 127 of the Act for companies, directors of companies, company secretaries and any persons that have dealings with companies, to allow use of an electronic signature to meet requirements for a signature.

The Determination extends section 127 of the Act to also cover execution of a document in electronic form.

Section 6 provides that a company may execute a document without a common seal if each person required to sign the document on behalf of the company either:

- signs a copy or counterpart of the document in physical form; or
- uses electronic communication which reliably identifies the person and indicates the person's intention about the contents of the document.

In both cases the physical or electronic communication must include the entire contents of the document but does not need to include the signature of another person signing the document physically or electronically.

Electronic communication is defined in the *Electronic Transactions Act 1999* and covers a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy. It also covers electronic voice communication.

In practice, there are a wide variety of means by which officers of a company might sign a document electronically. These include:

- pasting a copy of a signature into a document;
- signing a PDF on a tablet, smartphone or laptop using a stylus or finger;
- cloud-based signature platforms like DocuSign.

The modification means that signatories do not need to sign the same physical document. Instead, a document could be signed and scanned by the first signatory and then printed and signed by the second signatory, or separate electronic signatures could be applied to fully electronic versions of the document.

If these elements are satisfied, then an electronic signature applied under section 127 will be effective to execute a document.

While the Determination is in effect, there is no need for a single static document in order to satisfy section 127 of the Act. The entire process of executing a document can be carried out using electronic communications, so long as a method as reliable as appropriate to the circumstances is used to identify each person and his or her intention to execute the document on behalf of the company.

Section 7

Section 7 modifies subsection 129(5) of the Act so that a reference to a document being signed in accordance with subsection 127(1) of the Act, includes a document executed in accordance with the modified provisions included in this instrument.

Section 8

This provision is intended to give entities and their members the certainty that anything done in accordance with the modified operation of provisions modified by this Determination is as valid and effective for all purposes as if it had done in accordance with those provisions in their unmodified operation.

Section 9

The Determination is repealed at the end of the period of six months beginning on the day after the Determination was made, in line with the effect of paragraph 1362A(4)(a) of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations (Coronavirus Economic Response) Determination (No. 1) 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument modifies certain provisions of the *Corporations Act 2001* (the Act) and *Corporations Regulations 2001* to exempt certain persons from the operation of certain provisions where those provisions interfere with the company or person's ability to manage their business through the impacts of the Coronavirus.

Human rights implications

This Legislative Instrument engages Article 12 of the ICESCR – right to health.

Article 12 of the International Covenant on Economic, Social and Cultural Rights protects the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

This Legislative Instrument promotes the right to health by assisting to control the spread of communicable diseases that may cause serious harm to human health. The Act requires or permits companies to hold certain meetings at physical venues. This Legislative Instrument modifies the operation of the Act so that companies are permitted to hold meetings using one or more technologies. This allows meetings to proceed, without contributing to the spread of communicable diseases that can occur when large numbers of people gather together.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.