NORTON ROSE FULBRIGHT

2 March 2021

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 5, 60 Martin Place
SYDNEY NSW 2000
AUSTRALIA

Tel +61 2 9330 8000
Fax +61 2 9330 8111
GPO Box 3872, Sydney NSW 2001
DX 368 Sydney
nortonrosefulbright.com

Email: economics.sen@aph.gov.au

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Your reference:

Our reference:
4001567

Dear Mark

Consultation on *Treasury Laws Amendment (2021 Measures No.1) Bill 2021*

We welcome the opportunity to make this submission to the Senate Economics Legislation Committee (**Committee**), regarding the *Treasury Laws Amendment (2021 Measures No.1) Bill 2021* (**Bill**).

We act in significant corporate and financing transactions, and also act for a range of entities in major litigation, in both the Federal Court of Australia and the State Supreme Courts.

Given the time frame available to respond, we make the following brief comments.

1 **Schedule 1 amendments – sections 127 and 129**

We have been provided a copy of the submission made by Allens Linklaters on the Bill, submitted 1 March 2021, that addresses the proposed amendments to sections 127 and 129 of the Corporations Act 2001. **We support that submission and endorse the views expressed in it**.

We also attach a copy of the joint submission made by the Walrus Committee[1] in response to the document execution provisions contained in the exposure draft *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill* (**Exposure Draft**), in November 2020 (**Walrus Submission**, attached).

We are strongly supportive of changes to the Corporations Act permitting electronic execution, to ensure that companies can operate with minimal transactional friction. We also welcome the amendments in the Corporations Act expressly allowing "split execution".

We consider the recent temporary measures in Determination No 3[2] permitting companies to execute deeds electronically have been highly beneficial and have been adopted with alacrity by the market. We are concerned about the revised timeframe for reporting on Schedule 1 of this Bill[3], in respect of the imminent expiry of the temporary measures in Determination No 3.

If the document execution provisions in Schedule 1 of the Bill do not come into effect before the Determination expires on 21 March 2021, we emphasise that there is an **urgent** need for the current

1 A committee of lawyers from five large Australian law firms, including Norton Rose Fulbright.
2 *Corporations (Coronavirus Economic Response) Determination (No. 3)* 2020 (Cth)
3 We understand it has been extended to 30 June 2021.

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises.
Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at nortonrosefulbright.com.

temporary measures in Determination No 3 to be extended. There ought not be an interregnum between the two regimes during which there would be great uncertainty about the state of the law

As stated in the explanatory material to the Exposure Draft: "Upon expiration of the temporary measures concerning meetings and document execution, companies will once again have to resort to in-person and paper-based mechanisms to satisfy regulatory requirements in respect of meetings and valid document execution."[4]

This would not be desirable for a range of reasons, including but not limited to the ongoing snap lockdowns being implemented to respond to COVID-19.

2 **Continuous disclosure amendments**

We are also supportive of amendments to the continuous disclosure regime in the *Corporations Act 2001* (Cth) (**Corporations Act**) to enhance certainty for companies and directors in the rapidly evolving legal, regulatory, economic and risk landscape in response to COVID-19. If the timeframe for comment on these provisions is extended, we would welcome the opportunity to provide a considered response to the amendments.

If we can be of any further assistance to the Committee, please contact us.

Yours faithfully

Nuncio D'Angelo
Partner
Norton Rose Fulbright Australia

Jack Pembroke-Birss
Partner
Norton Rose Fulbright Australia

Nuncio D'Angelo

Jack Pembroke-Birss

[4] [2.26] https://treasury.gov.au/sites/default/files/2020-10/c2020-119106-dem.pdf, accessed 1 March 2021.