

# Electronic Meetings, Notices and Signatures - Changes to the Corporations Act 2001

By Michael Paterson, Principal

To help companies overcome some of the impacts of COVID-19, changes came into effect on 6 May 2020, modifying the operation of the *Corporations Act 2001* (**Act**) and other legislation<sup>1</sup>. These **temporary changes** are in force for **6 months** and affect: **meetings, notice requirements and electronic signing of documents**. Some tips on signing documents electronically are in section 4 below.

## 1. MEETINGS

Companies can **use one or more technologies** to enable:

- (a) **meetings**, including **AGMs**, which can be held entirely **online**, with **no physical attendance** required to achieve a **quorum**; and
- (b) a proxy to be appointed electronically.

However, companies holding virtual meetings must **provide attendees with an opportunity to:**

- (a) **speak**;
- (b) **vote by a poll**, rather than a show of hands; and
- (c) actively **participate** in the meeting.

## 2. NOTICE REQUIREMENTS

Although already possible<sup>2</sup>, companies can send notices of meetings and material relating to the meeting:

- (a) **attached to an email**; or
- (b) via a **link, where members can view and download** the documents.

For **members without email**, the company can send a **letter to the member containing the URL** to the notice.

The notice should **specify any new arrangements** regarding **speaking, voting, and general participation**, to the extent the member is entitled to do so.

If a **notice has already been given** prior to these changes taking effect, a **fresh notice** outlining the new arrangements must be given at least **seven days before the meeting**.

## 3. ELECTRONIC EXECUTION

**“Document” now includes a document in electronic form** - section 127 of the Act<sup>3</sup>.

Signatories need not sign the same physical document (**split execution**).

While the Determination is in effect, there is **no need for a single static document** in order to satisfy section 127 of the Act. One signatory can print, sign, and scan the document and send that document to another signatory who does the same (**modified split execution**).

Signatories can apply their e-signature to electronic versions of the document (**electronic execution**). The **process** of executing a document can be carried out using **electronic** communications, so long as a **method** which is as **reliable as is appropriate** to the circumstances is used to **identify** each person and their **intention** to execute the document.

The assumptions in s.129(5) of the Act **apply to electronic documents**, namely:

- (a) that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1) of the Act; and
- (b) that anyone who signs the document and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

The copy, counterpart, or electronic communication must include the entire contents of the document, but need not include the signature of another person signing the document nor any material to which the document refers.

#### 4. **APPROPRIATE WAYS TO SIGN ELECTRONICALLY... ?**

The main problem is possible **fraud**. You need to **assess the risks** and act accordingly.

For some transactions, **an exchange of e-mails may be sufficient**, particularly if the parties have been dealing with each other for some time and/or they have been speaking with each other by telephone or video conference.

For important transactions, **signing a document over a video conference platform**, such as Zoom, with all parties present should be fine in almost all circumstances. Sign in the presence of an **independent third party witness** for further security, or as necessary, as in **the** case of a deed which requires a witness. Note that **Zoom meetings can be recorded**, but **seek permission to record first**.

**Be wary of some platforms.** It can be far too easy for someone to sign on behalf of someone else using some platforms, and the person signing may not have the requisite authority. Having said that, a document signed using such a platform will satisfy the requirement of the Determination, if you are satisfied that:

- (a) the person signing is the intended person; and
- (b) they intended to sign the document.

Do not place too much reliance on an electronically-signed document without extra independent verification.

If the document is going to someone who does not know the signatories personally, they may have to **hold up 100 points of ID** to the camera as well.

To prove directorships, a **current ASIC company extract**, (which can be obtained **here**) might be held up to the camera.

When in any doubt, **speak to the purported signatory by telephone** and make a note of the conversation.

Always [verify change of bank details by telephone](#), and before transferring large amounts of money. Also [check the location of the bank](#) via the BSB number or other means, and double check if the branch is not a local branch.

[Safely and securely store all electronic and paper records](#) for a period of [at least 7 years](#).

To read the Determination click [HERE](#).

### Notes

1. Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 (**Determination**)
2. Under s249J of the Act.
3. Section 6 of the Determination defines a **“document”** for the purpose of section 127 of the Act.



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As well as being a solicitor, Michael Paterson is also a software developer and is actively involved in both the legal and computer industries. He has dual qualifications in both disciplines: Bachelor of Science (Computer Science) Bachelor of Laws (Hons.) from A.N.U. (1982-1986).

With his knowledge and practical experience in the computer industry, Michael has developed a niche practice area in computer, technology, and intellectual property law. In addition, he regularly presents seminars on computer-related legal issues to various industry and professional bodies and gives guest lectures at Curtin University and Edith Cowan University.