



21 October 2020

Manager
Market Conduct Division
Treasury
Langton Cres
PARKES ACT 2600

By email: businesscomms@treasury.gov.au

Dear Sir/Madam

Virtual meetings and electronic document execution

Thank you for the opportunity to lodge a submission in the response to the exposure draft legislation and explanatory material for the reforms to make virtual meetings and electronic document execution permanent.

This submission is being made by the Australian Restructuring Insolvency and Turnaround Association (ARITA). Information about ARITA is at the end of this submission.

ARITA fully supports making permanent the temporary relief for virtual meetings and electronic document execution that was provided under the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* and Determination No. 3 (**the Determinations**). This support extends both to ARITA's own position as a not for profit (**NFP**) and for the better conduct of external administrations.

Reforms for NFPs

As a professional membership association, ARITA has experienced, firsthand, the significant benefits of being able to conduct AGMs virtually. ARITA's membership is spread not just across the country but internationally. Traditionally, our AGMs have therefore provided limited access for those outside of one of the East coast capitals and, more specifically, Sydney. Members outside of these locations have only been able to participate and vote by proxy unless they wished to incur significant personal expense. This lack of access, therefore, also means a lack of ability to properly participate and to influence outcomes as members should be able to via the AGM process.

Being able to conduct our AGM virtually during COVID demonstrated that we could engage with a much wider audience of those entitled to participate, at a lower cost for us (which

represents a saving of members' money) and significantly less inconvenience even for those in the city in which we broadcast the meeting from.

Unwinding these interim provisions would, certainly in our instance and that of organisations like us, represent a reduction in the opportunity for participation by our membership and a loss of improved governance.

Issues for consideration

We do wish to raise several concerns in respect of the exposure draft legislation.

Failure to include external administrations

The legislation as drafted does not provide for virtual meetings for external administrations although the Determinations did. We note that there is significant reform currently being undertaken in respect of insolvency via the *Corporate Amendment (Corporate Insolvency Reforms) Bill 2020 (Insolvency Reforms)*.

We strongly support the continued availability of virtual meetings for external administrations for the following reasons:

- Reduced cost to the external administration compared to physical meetings
- Provides greater access to creditors no matter where they are located, and
- Encourages greater direct engagement by creditors in the external administration process as it is easier for them to attend, taking less time than attendance at a physical meeting.

We believe that external administrators have successfully used the temporary measures to hold meetings for all size external administrations, including very large matters such as Virgin Australia, during the operation of the Determinations.

We are aware that it may be intended that virtual meetings for external administrations will be dealt with by amending the Insolvency Practice Rules (**IPRs**) as part of the Insolvency Reforms rather than via this Bill.

As we have not yet seen the amendments to the IPRs this isn't clear and as a result there seems to be a gap in respect of external administrations at the moment. We note the Explanatory Materials and Exposure Draft for the Insolvency Reforms have headings for "Virtual Meetings and Electronic Communication" but the content only deals with Electronic Communication. The Explanatory Materials for the Insolvency Reform do mention "forthcoming amendments to the IPRs".

Place where an electronic communication is sent or received

Proposed s105B in Part 2 does not recognise communication from an external administrator. Where communication is sent in relation to an external administration or receivership, the electronic communication should be taken to be sent from their primary place of business which is registered with ASIC. An external administrator is an individual and the default for an individual is their residential address. This would not be appropriate.

Part 1 Item 22

The purpose of the former paragraph 250BB(1)(b) was to require that the proxy specify the method of voting on a resolution where the proxy holder is voting regarding remuneration where the proxy holder has a financial interest. We do not understand the purpose of the proposed amendment as it seems unreasonable for 250BB(1)(b) to be removed. Also, the drafting of the new provision has an “and” at the end of the provision and yet 250BB(1)(b) is the final part of that provision and there is no amendment to suggest a further limb. We think this may be a drafting error.

As always, we look forward to continuing to work closely with Treasury and should you wish to discuss any aspect of our submission, please contact Ms Kim Arnold, Policy and Education Director, on 02 8004 4340.

Yours sincerely

A handwritten signature in black ink, appearing to be 'John Winter', with a long horizontal line extending to the right from the end of the signature.

John Winter
Chief Executive Officer



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2019, ARITA delivered 118 professional development sessions to over 5,300 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 15 inquiries, hearings and public policy consultations during 2019.