



30 October 2020

The Manager
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: businesscomms@treasury.gov.au

Permanent reforms in respect of virtual meetings and electronic document execution

Justice Connect welcomes the opportunity to respond to the Exposure Draft and Explanatory Materials on permanent reforms of virtual meetings and electronic document execution. We appreciate The Treasury's commitment to consultation with the not-for-profit sector.

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We are a registered charity, operating for more than 25 years, with a national footprint.

We work to ensure people and organisations can access the right legal help at the right time, to avoid the negative impacts on their wellbeing or organisational health due to legal problems. We believe in a fair and just world, where communities are supported to engage with and fully participate in our legal system. See www.justiceconnect.org.au

Our expertise – our Not-for-profit Law program

This submission draws on the experience of our unique Not-for-profit Law program which provides free and low-cost legal services to not-for-profit organisations and social enterprises. Not-for-profit Law responds to more than 1,750 legal enquiries a year from a wide range of not-for-profits, with a particular focus on small-medium groups many of which are registered charities. Our advocacy focuses on an improved legal and regulatory framework for the not-for-profit sector, with an eye to the impact and cost of regulation for these smaller groups.



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We held a [webinar](#) focused on virtual and hybrid AGMs, have produced [COVID-19 FAQs](#) on the issue and dealt with many follow up enquiries. We draw on this experience in making this submission.

Impact of proposed reforms on the not-for-profit companies

Many of our clients have benefitted from the temporary measures about holding virtual meetings and electronic document execution introduced because of COVID-19. We see merit in passing reforms to permanently adopt these changes.

However, we are concerned that the way some of the proposed reforms are drafted will create complexity and impose an unnecessary burden on small and medium sized not-for-profit companies.

According to ACNC data, there are almost 10,000 *Corporations Act 2001* (Cth) entities registered as charities with the ACNC, with most of these being companies limited by guarantee. The overall number will be higher as there are other not-for-profits (non-ACNC registered charities) also incorporated with this structure. The explanatory materials do not (as far as we could see) reference members of companies limited by guarantee.

There are two concerns we want to highlight, especially in light of [ACNC data](#) that more than half of all charities operate without any paid staff and 66% of charities generate less than \$250,000 in annual revenue.

Use of polls

The proposed reforms require that for any virtual members meeting, voting must be taken on a poll rather than a show of hands.

For small not-for-profit companies with less than, say, twenty members, this requirement is overly restrictive and may lead to non-compliance. Live poll functionality is not a feature of all electronic meeting software (especially software that is freely available). Our clients have used several different programs to hold virtual meetings over the last few months and many will not have access to 'add on' (premium) options such as live polling.

Under the proposal, if a company chooses to hold a virtual meeting using software without live poll functionality, it would need to conduct a poll by other resource-consuming means to comply with this requirement, such as email or letter.

As long as the company can show that there was only, say, twenty or fewer members present, then a vote by show of hands, or another similar method (for example, name and the words 'in favour' or 'not in favour' in the chat function) seems appropriate and less burdensome. There is a need to give flexibility to these small groups as long as the overarching principles of transparency and accountability are met.

Minute-taking

The proposed reforms require minutes of a virtual members meeting to include any questions or comments submitted by a member before or during the meeting.

As discussed above, this requirement imposes too high a burden for small not-for-profit companies with limited resources to access to sophisticated meeting technology. It also prescribes a record-keeping requirement that already exists through other substantially similar obligations. We have had the benefit of reading the submission of the Australian Institute of Company Directors and endorse their comments on this issue.

Recommendations

Expressly acknowledging that these proposed reforms equally apply to not-for-profit companies in the explanatory materials is a starting point to addressing the issues raised in this submission.

We submit that the proposed reforms must also incorporate flexibility for smaller not-for-profit companies. By introducing the proposed reforms as mandatory rather than replaceable rules, there is no flexibility in relation to the issues that we have identified in this submission.

At a broader level, from our experience in advising hundreds of clients in relation to holding virtual meetings over the course of this year, we respectfully request The Treasury to work with the state and territory regulators in relation to the types of changes considered in these proposed reforms. The lack of coordination has resulted in arbitrary differences about how a not-for-profit organisations can use technology to comply with meeting their obligations, depending on their structure and where in Australia they are located. Not an issue that the business sector faces.

We are happy for this submission to be made publicly available (with signatures redacted).

Yours sincerely



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