

14 September 2021

Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600

By email: businesscomms@treasury.gov.au

Consultation Submission from Link Group (Link) in relation to *Exposure Draft: Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments (ED)*

Link welcomes the opportunity and is pleased to provide further feedback to Treasury regarding *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments (ED)*.

Link Group's subsidiary, Link Market Services Limited as a share registrar, handles the recording of close to 25% of all shares listed on the Australian Securities Exchange (ASX) servicing over 40% of the ASX top 200 companies. Part of our service provision is to run meeting services; In Australia, Link currently conducts around 700 meetings on behalf of its clients each year. During the pandemic increasingly many of our clients have adopted to host their meetings via wholly virtual technology solutions. Company Matters Pty Limited, another Link Group subsidiary, provides governance, company secretarial and legal support to over 400 clients each year.

Link and its client have greeted the passing last month of the *Treasury Laws Amendment (2021 Measure No 1) Act 2021 (TLAB)* as a positive step forward and we certainly believe that it provides needed certainty in the immediate period to our clients as they plan for their upcoming AGMs (or other General Meetings and Scheme meetings) during the ongoing government mandated restrictions in some locations. We together with our clients also welcome the introduction of permanent reforms granting ASIC new powers under exceptional circumstances.

We are supportive of permanent change and the greater use of any technology that provides flexibility to our clients, and their shareholders. We support the position that permits incorporating wholly virtual meetings on a permanent basis without need for constitutional change and believe that this would align Australian Treasury Laws with other global legislative instruments regarding the provisions of wholly virtual meetings.

Division 2 – Technology neutral sending of documents to members

As an industry stakeholder Link is supportive of electronic communications and together with our clients encourage electronic campaigns and use of more sustainable communication channels, so broadly we support the proposed, subject to the following comments:

Proposed section 110E(4) as we have previously discussed in the consultation period we do not believe that the 10 business days period is sufficient to allow for the operational aspects of data management and dissemination of communications; we would suggest that period be no less than at least 30 business days;

The intention to expand the regime in future to consider other documents as part of the '*Modernising Business Communication*' reforms, we welcome and remain supportive of

advancement in legislation to enable digital engagement, as referenced in our submission dated 26 February 2021. However, we strongly recommend that future communication elections for 'other' documents should only allow hard copy distribution as a result of a positive election by shareholder/member of '**opting in**', as currently applied successfully for the management and distribution of Annual reports, section 314 of the Corporations Act.

All parties, such as Issuers and their shareholders/members consider this application as acceptable, the shareholder/members remain engaged as they elect to receive the materials they deem appropriate and further they have choice how they receive those documents while the Issuers achieve cost savings and an increasing carbon neutral position as an organisation in producing and delivering less hard copy materials as enabled by updated legislation.

The proposed sections 110H and 110J do not provide simplification to the ongoing management of shareholder/member communications, these sections do not expand the capacity of a shareholder/member to request information as they already have existing provisions to enable access to documents in either format electronic and/or hard copy. For simplicity we suggest the proposed sections are considered for deletion.

Hybrid meetings of shareholders of a company or registered scheme

Link welcomes the ability for Issuers to hold hybrid meetings however we remain focused on delivering a future based on technology neutrality, our viewpoint remains unchanged from our submission dated 16 July 2021, we believe the ED highlights a missed opportunity in the government objectives of use of digital technologies.

The mechanism of the ED in not allowing wholly virtual meetings as a **permanent solution** does not extend the desired flexibility for companies, as that additional option of choice is removed by the requirement that a wholly virtual meeting needs to be 'permitted' by constitution, or as required.

Hybrid meetings, whilst suiting some types of entities, will not suit all companies. There should be maximum flexibility for companies to hold meetings in a manner that is best suited to their individual circumstances and their shareholders/members, having regard to the prevailing circumstances and environment in which they find themselves operating (for example, such as during a pandemic).

Reasonable opportunity to participate

Link as a service provider can adequately provide our clients with the necessary technology solutions to fulfil these requirements to give all shareholder/members, entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting as prescribed by the Corporations Act, sub section 249S(1) however, sub section 249S(7)(b) to provide **both** facilities; orally asked questions and written questions does not provide a company with flexibility, Link's perspective remains that each company should have the right to decide method based on their own set of circumstance. In 2020 Link provided this functionality to our clients, of which 3.5% of those that conducted a wholly virtual meeting elected to use this service however less than 0.01% of their shareholders/members participating online used this option to orally ask a question at the meeting, whereas written technology was well used and deemed acceptable to attending participants.

Lastly, we do seek clarification to section 249S(6) - (7), as to the '*right to observe directors or the main proceedings*' does 'observe' give reference for the shareholder/member to watch or view 'directors or main proceedings' if so does that deem audio only meetings, or portion of meeting conducted by audio rather than video conference as not being a form of technology that is acceptable? The use of audio only meetings within the framework of a hybrid or wholly virtual meeting is paramount, for multiple reasons not limited to but including:

- Redundancy options of existing service provision;

- Cost effectiveness of delivering an event;
- International participation by Director, or other: and
- Preferred method when connectivity is unstable in various locations so not to disrupt proceedings.

Summary

In closing, Link is supportive of permanent change and the greater use of any technology in allowing flexibility in providing meeting solutions and ongoing reforms to modernise the Australian business landscape. Now is the time for change as evident by the past 18 months which we've seen all parties embrace and rapidly uptake digital technologies as allowed by temporary relief measures and now TLAB, we seek and encourage that the ED goes further redefining the way we engage in the future to allow Australian businesses to benefit from current and future technologies, when available supported by laws and regulatory practice.

Yours sincerely,

A handwritten signature in black ink that reads "Lysa McKenna". The signature is written in a cursive, flowing style.

Lysa McKenna
CEO Corporate Markets, APAC
Link Group