

26 February 2021

Data Economy Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

By: mbcomms@treasury.gov.au

Submission from Link Group (Link) in response to Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws

Link Group (Link) welcomes the opportunity and is pleased to provide feedback to the consultation paper, Modernising Business Communications.

Link's subsidiary, Link Market Services Limited provides registry services to over 1,000 clients in Australia, of which 460 clients are listed on the Australian Securities Exchange and conducts around 771 meetings on behalf of its clients each year. Company Matters Pty Limited, another Link Group subsidiary, provides governance, company secretarial and legal support to over 400 clients each year.

For a number of years, Link in its own right and on behalf of its clients has been vocal and supportive of initiatives to introduce technological solutions and for existing laws to be amended particularly in the areas of the distribution of meeting notices and materials and the conduct of members' meetings.

In this regard, Link and its clients have greeted the extension announcement by the Federal Treasurer on 17th February, 2021 regarding the *Treasury Laws Amendment (2021 Measures No. 1) Bill* as a positive step forward that provides 31 December financial year close entities more certainty as they plan their Annual General Meetings and gives some insights beyond 15th September, 2021 for permanent change in relation to distribution of meeting notices and materials.

With the relief measures in place, Link has facilitated 393 hybrid and fully virtual online meetings for clients in Australia in 2020, 225 of these were AGMs for listed entities. Investors embraced the convenience of technology and digital engagement as evidenced by online votes exceeding paper, a 29.08% increase on previous year for S&P/ASX100. For more detailed statistics and insights into investor voting patterns please refer to our AGM Snapshot <https://www.linkgroup.com/agmsnapshot/2020-meetings/index.html>

The adoption of technology that supports digital engagement has accelerated in response to COVID-19, as already demonstrated with electronic distribution of meeting materials and virtual meetings, thus we are encouraged by the commitment from the Federal Government to advance further and improve the technology neutrality of Treasury portfolio laws.

Link strongly supports use of digital technology solutions to promote increased industry participation and engagement and welcomes the removal of legal impediments to allow for current and future technology led solutions, where appropriate. The advancement of technology supported by legislative change will create a more efficient market, that promotes long term business efficiency for Australian companies, enhance investor experiences, reduce operating costs, and minimise the overall environmental impacts.

We welcome the opportunity to participate in any further discussions and invite Treasury to contact us to discuss our response in more detail.

Yours sincerely,

A handwritten signature in black ink that reads "Lysa McKenna".

Lysa McKenna
Co-CEO Corporate Markets
Link Group Limited

Modernising Business Communications

Link Group's General Comments

Link Group strongly supports Treasury's review and consultation in relation to modernising business communications and welcomes amendments to the *Corporations Act 2001 (Commonwealth) (Corporations Act)* and other as necessary and relevant.

Link supports in our own right and on behalf of clients any opportunity to modernise business communications and introduce digital efficiencies to the Australian market. Link considers that based on the past 12 months Issuers have been able to avail significant costs savings under the temporary relief measures provided by the Federal Government in relation to the distribution of meeting notices and materials. Issuers during this period that have applied use of relief measures have been able to demonstrate that engagement by use of digital methods has not impacted experiences, digital delivery has expediated the dissemination of materials, reduced environmental impacts, promoted sustainability coupled together with financial benefits.

Examples of financial savings by way of use of relief measures below:

ISSUER	INDEX	SAVINGS (A\$) Approx.
Issuer A	ASX20	\$110,000.00
Issuer B	S&P/ASX100	\$85,000.00
Issuer C	S&P/ASX100	\$18,000.00
Issuer D	S&P/ASX100	\$17,300.00
Issuer E	S&P/ASX200	\$23,000.00

Based on these encouraging outcomes in response to recent temporary changes Link considers the advancement of digital technologies and the opportunity to improve the technology neutrality of Treasury portfolio laws a priority and correctly reflects the future path of engagement and communication in general.

Link Group's Responses to Questions

Where there is a question which Link has determined it is either not qualified to provide a response, or has no response to provide, we have not included and marked N/A in our submission.

Do the business communication requirements in Treasury laws create a burden on business?
(a) If so, what categories of communication (as outlined in paper) or legislative provisions are creating a burden and should be prioritised for reform?
(b) Are there non-regulatory requirements that inhibit businesses, consumers or regulators from using their preferred method of communication? If so, please provide example.

Link will focus the response on the Corporations Act in relation to giving notice of takeover bid, a target's response and notice of the bid's variations. We highlight the burden that exists for bidder and target in a takeover situation and the consequential downstream impact on investors.

The process for both gathering the information from a target¹ and giving effective notice of a takeover bid to an investor in the target company² are not well served with a modern business communications method by the Corporations Act. Neither does the Corporations Act support the processes for giving notice of a bid's variation³ or of the intention to proceed to compulsory acquisition or the notification process used by the target to inform dissenting shareholders of the manner in which they may claim consideration. Under current settings there continues to be a system overly reliant on paper, printing and postage to maintain compliance with the law.

A bidder must ensure they complete despatch of their offer in a three-day window between commencing despatch and its completion. Use of email despatch to target shareholders that have made that choice for other similar disclosure documents would ensure more offers were despatched inside the three days allowed. For bids over targets with large share registers and particularly where the disclosure documents are also voluminous (containing independent expert's reports or involving scrip consideration in an issuer with large or involved businesses requiring deeper explanation) the commencement of despatch is artificially constrained to not extend the period of despatch to more than three days. Use of digital engagement to target shareholders would ensure more offers could be despatched inside the three days allowed without undue delay to the start of that despatch process.

For each of the takeover bid notifications above there are opportunities for improvements from existing processes already well understood and managed by the same professional service providers entrusted to manage the needs of a register of members and all takeover bids over issuers listed on Australian approved exchanges makes the transition uncomplicated and readily available to improve (a) the speed of communication (b) in most cases the cost of that communication and (c) enhance investors experience with an efficient communication method.

The principles already exist in the Corporations Act and waivers to use the deeper information now held in an issuer's register of members to a modern purpose have been granted in ASIC relief as recent as February 2021⁴ and in April 2019⁵ for bidders and targets and in May 2020⁶ for a target. The actual information that may be sought and the terms it may be used need modest change to the words in the law.

There has been some acknowledgement of a need for policy change in two recent takeover bids and the preparation for a third prospective bid that Link has been engaged to perform services for. This identifies a gap exists and also a willingness of the regulator to consent to submission on variations to strict compliance with some current requirements of the law. The consequences of the current communications requirements result in poorer investor engagement, higher cost to communicate and slow communication.

The information available to the bidder is the first barrier as it is restricted by the Corporations Act 2001(s641). We submit the Corporations Act should be expanded to permit the bidder to seek and be certain of receiving email addresses given by investors and that would permit email to be used to deliver the disclosure document(s) required. Given the evidence of emerging regulator flexibility, but an inability by a bidder to discover how receptive a target's register may be to email, only offers that carry the target's recommendation are likely to get the benefit of any regulator dispensation. It is most likely in the current setting only bids conducted under a bid implementation agreement could generate improved communication outcomes for investors and the principals from modernised business communications. The bidder may not explore the necessary relief, expending professional resources to explore options with the regulator and make plans for use of email without additional certainty and reward for effort on their part.

¹ Corporations Act s641

² Corporations Act s648B and s648C

³ Corporations Act s650D(1)(c)(ii)

⁴ ASIC Instrument 21-0080 A06/21, 9 February 2021

⁵ ASIC Instrument 19-0338 A16/19 16 April 2019

⁶ ASIC Instrument 20-0405 A18/20 5 May 2020

If the Corporation Act allowed collection of email addresses and their purpose with the other information that s641 allows and ASX rules allow, the bidder would have at their disposal a credentialed service provider with the necessary process and procedures to manage email communication about a takeover bid in a manner aligned with and respectful of the investor's purpose and consent to receive communication. Share registry service providers can also manage the ongoing overriding election of investors to be served with physical documentation if that was their choice. And importantly prompt and reliable fulfilment of such choices. We see that the recent ASIC Instruments present requirements about managing and fulfilling an investors choice to be sent hard copy notifications and submit that fulfilment of these types of requirements are a current business capability of Link, and other share registry providers.

What is the cost of complying with the current regulations? Please provide a breakdown of costs and an indication of the frequency at which these communications occur.

(a) Would these costs be reduced if the law was technology neutral? Please provide a breakdown of any anticipated savings and any non-monetary benefits.

As to demonstrate costs associated with giving the required notice of takeover bid and also notice of its variations – please refer to a recent transactions Link was engaged to provide share registry and print and mail fulfillment services.

Note: parties have been de-identified for this purpose.

Target A maintained a register of circa 18,000 investors at the bidder's register record date with shareholders distributed internationally in countries such as Argentina, Europe, Russia and some Scandinavian regions. The register was heavily weighted to retail investors by number with 8,000 with parcels worth less than \$1,000 at the bid price. The register was slightly slanted to investors who carried their investment in CHESS. Over 9,900 investors had provided an email address to the target with purpose of use (consent) for all Issuer communications with the target via email distribution.

Bidder B produced a Bidder's Statement and even posted some of their eleven supplementary bidder's statements to target shareholders. The initial print and post budget for just their despatch of the offer (bidder's statement and personalised form) was \$100,000. The bidder extended its offer six times in a four-month period and varied its offer consideration upwards twice; once either side of its decision to declare its offer unconditional, requiring separate printed and posted notices to different subsets of the target's register of 18,000 members.

The overall print and mail expenditure for both Bidder and Target in this example exceeded \$727,000. Considerable savings (in excess of approximately 60%) would be achieved if the Corporations Act was technology neutral.

The actual postal costs vary on size and weight of a posted article whereas, technology solutions of email communications and micro-sites as source libraries do not incur those pricing fluctuations which are borne by Issuers.

Where a required disclosure document exceeds 180 pages the significant added cost of parcel postage rates and impaired delivery is a real problem. Parcel post items may only require delivery of a card by the postman and not the actual disclosure document to the investor. If the item is not collected the investor has neither the disclosure nor means of acceptance in hand.

Compared to physical print and post solutions email communications will at least be:

- \$0.85 per item less expensive for a 10-16-page communication;
- Approx. \$3 less expensive for a 60-page bidder's or target's statement; &
- Approx. \$10+ less expensive for a 180-page bidder's or target's statement, each offering significant savings.

Email offers much more reliable delivery to the investor, including tracking of the rate of emails that do not bounce, that are opened and whose content is accessed. These intelligent applications of electronic communications have no parallel in posted items, except a 'bounced' postal delivery may eventually have the item returned as not at this address

From an engagement perspective, the investor will be in receipt of critical investment information in a more timely manner in order to make and or seek advice as necessary for their personal circumstance.

Do you agree with the categories of communication outlined in consultation paper?

- (a) Are there other types of business communication that should be considered?
- (b) Do you agree with the proposed principles outlined in the consultation paper or are there additional or alternative principles that should be considered?
- (c) What, if any, barriers would restrict implementation of the proposed principles?

Link broadly agrees with the categories outlined in consultation paper. Link encourages the use of technology to improve business efficiencies, engagement outcomes and communications.

How could stakeholders (such as consumers and investors) benefit or be disadvantaged from greater technology neutrality in Treasury Laws? Please provide any relevant data, if available.

We shall continue to work with all our clients to provide a broad base service to all to minimise any impacts.

Which of the options identified on page 3 do you consider would provide the biggest benefits while appropriately managing risk?

N/A.

If technology neutral reforms are introduced, what should businesses do to manage the impact of these changes, to ensure that benefits are realised and disadvantages overcome?

Link would continue to work together in partnership with our clients (and their investors) to deliver a clear and comprehensive communication pathway to manage change.

What transitional issues do you foresee for businesses, consumers and regulators in moving to technology neutral communication methods?

- (a) What are the key implementation risks and their likelihood of occurring? How can we mitigate these risks? Please provide examples.

N/A.