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Market Conduct Division

Treasury

Langton Cres

Parkes ACT 2600

Email: businesscomms@treasury.gov.au

**Submission re: Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments**

Dear Treasury

Thank you for the opportunity to provide this submission on the exposure draft legislation to support companies and their officers to use technology to satisfy *Corporations Act 2001* (Cth) (Corporations Act) requirements.

The Australasian Investor Relations Association (AIRA) supports the principles and key reforms being advanced in the Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments (Amendment Bill). Our submission, while highly supportive of the Amendment Bill, outlines a number of important considerations to ensure this legislation is enduring, adaptable and fit for purpose in the long term.

**About the Australasian Investor Relations Association**

The Australasian Investor Relations Association is the peak body representing Investor Relations practitioners in Australia and New Zealand. Our members include the majority of ASX100 companies and Australia’s leading share registries.

AIRA exists to provide listed entities with a single voice in the public debate on corporate disclosure and to improve the skills and professionalism of members. Our mission is to advance the awareness of, and best practice in, investor relations in Australasia and to achieve better outcomes for all capital market stakeholders. We drive industry best practice and reform through our engagement with government, financial regulators, and other stakeholders to promote a supportive environment for the sector.

We have published valuable guidance for listed companies on what constitutes best practice in the field in its *Best Practice Investor Relations: Guidelines for Australasian Listed Entities* and *ESG Engagement Guidelines: Recommended Practices for Australasian Listed Entities*. These are the definitive guides for the practice of investor relations across Australasia.

**Summary of recommendations**

AIRA welcomes the release of the exposure draft of the Amendment Bill. The reforms underlying the legislation, if implemented, represent a significant milestone in the evolution of Australia’s corporate law.

For more than a decade, AIRA has advocated for permanent changes to the Corporations Act to allow companies to leverage digital technology to distribute meeting related materials, validly execute and witness documents, and hold virtual and hybrid company meetings. Our position is the culmination of extensive engagement with our members, the Australian Government and Treasury to bring the laws governing investor relations into the 21st century. It has also been refined by the COVID-19 pandemic, which highlighted the shortcomings of the current framework, requiring the Australian Government to respond to and address uncertainty and physical limitations placed on company officers and shareholders.

The Amendment Bill, to a large extent, advances Australia’s corporate law into the digital age. Crucially, it gives permanency and legal certainty to companies, ensuring that where substantive statutory requirements can be met using digital technologies, the law would allow companies and their officers to satisfy their statutory requirements for legal purposes. This extends to the valid execution of documents electronically, even if the witnessing of a common seal of the company occurred via electronic means. It also permanently allows any document that relates to a meeting to be given electronically and signed electronically, which provide substantial savings for companies in their compliance with these regulatory requirements. Moreover, it gives legal certainty to hybrid and virtual meetings, which AIRA has long advocated to establish.

We believe, however, that the Amendment Bill does not go far enough in some areas. It is disappointing that virtual meetings have not been given the same status as hybrid meetings. A company, particularly in the current context of the global pandemic, should be given the flexibility and the freedom to choose which meeting format – or combination of formats – best suits its shareholders without having to change its constitution. There are more than 2.6 million registered companies who will need to comply with the Amendment Bill, whose shareholder and member requirements are drastically different to the companies listed on the ASX300 index. Both companies and investors have benefitted from the added flexibility afforded to them since temporary legislation was enacted to give legal certainty to hybrid and virtual meetings. The feedback from AIRA members has overwhelmingly been that the choice and accountability to tailor meeting formats to an increasingly diverse investor community has increased attendance and investor engagement.

Overall, however, AIRA believes the Amendment Bill strikes an appropriate balance between different stakeholder demands. In its current state, the Amendment Bill will provide our members with greater choice, efficiency and certainty, reduce their regulatory burden, and align the Corporations Act with expectations of shareholders, industry and global markets. The recommendations we outline below will further refine the Amendment Bill to the needs of companies and investors.

**Response to draft provisions**

AIRA has structured its response to the draft provisions according to the key reforms in Schedules 1 and 2 of the Amendment Bill.

**Companies signing documents**

**AIRA supports the Amendment Bill provisions contained in Schedule 1 of the Amendment Bill which provide a permanent statutory mechanism for companies to execute documents electronically**, including the witnessing of a common seal of the company via electronic means and the ability to sign separate copies of documents.

**Giving and signing meeting documents electronically**

**AIRA supports the Amendment Bill provisions permanently allowing any document that relates to a meeting to be given electronically and signed electronically**. These provisions will provide significant savings for companies and reflect current norms of shareholder engagement and communication.

AIRA has previously argued that where an email address already exists for a shareholder, there should be no obligation on companies to proactively communicate with that shareholder of the option to receive documents in hard copy. Any such obligation would be costly and unnecessary given current adoption rates of digital technology and the Australian Government’s own digital reform agenda.

**Hybrid and virtual meetings of a company or registered scheme**

**AIRA supports the Amendment Bill provisions that make permanent changes to give companies and registered schemes greater flexibility to use technology to hold meetings in hybrid and virtual formats.**

**Greater flexibility, however, should be provided to virtual meetings in the Amendment Bill. AIRA contends that 249R(c) should be amended to remove the requirement that a company must permit virtual meetings by its constitution**. The Amendment Bill must function for all types of companies, and ultimately, shareholders should be able to decide to have virtual meetings if that is the most appropriate format for that particular company. As we note above, there are 2.6 million registered companies in Australia and only 300 are listed and in the ASX300 index.

The Amendment Bill therefore places a regulatory burden on the vast majority of registered companies who in certain circumstances would prefer to hold virtual meetings. Company meeting and AGM practices, including the adoption of hybrid and virtual meetings, have evolved enormously since the beginning of COVID-19 and the Amendment Bill is a vital opportunity to build on that evolving practice through the adoption best practice guidelines, which AIRA, the Governance Institute of Australia and Law Council have promulgated and updated in several iterations.

In the absence of greater permanent flexibility around virtual company meetings, **AIRA believes that ASIC and the Treasurer, should be given the power to release class orders of the 249R(c) requirement in emergency situations such as during the current pandemic in the event that lockdowns continue into the future.**

**AIRA supports provisions 249S and 252Q which provide prudent and sensible requirements for companies to comply with to ensure members as a whole are given a reasonable opportunity to participate**. It is vital the shareholder rights are protected and enforced as new technologies are used to conduct company meetings. As per 249S(6) and (7), we believe the types of technology should not be prescribed but left to companies to determine how shareholders can reasonably participate in writing or orally. Given the potential additional cost of providing an ability to participate orally, perhaps this should be confined to listed entities in the ASX300 index only.

**Requests for independent reports on polls**

AIRA supports the Amendment Bill provisions in Schedule 2 Part 2G.6 allowing certain members of listed companies and registered schemes to request that the company or responsible entity appoint an independent person to observe and/or prepare a report on the conduct of the polls at the meeting of the members. We stress, however, that this function should not duplicate any existing scrutineering role that a company might already provide. **As such, we recommend that “independent person” be defined in Part 2G.6 to include the company’s share registrar, if circumstances permit**.

**AIRA supports the inclusion of 253V that establishes the threshold to request an observer on a poll as “members of a company with at least 5% of the votes”.** We support this new threshold and suggest that it be slightly adjusted to include members with at least 5% of the issued capital of a company. **We also believe this definition could be a sensible statutory requirement for a range of other member rights, including the requirement for shareholder resolutions.**

**Shareholders ability to obtain a hard copy of meeting-related materials**

Aira believes the proposed requirement in TLAB 1 for companies to advise shareholders within two months of their ability to obtain a hard copy of meeting-related materials, should be abolished as it is an unnecessary regulatory burden on companies.

However there should be a requirement for companies to send a hard copy to a shareholder upon request, as long as this election is received at least 14 days prior to the cutoff for the dispatch of materials.

**Review**

**AIRA supports the provision to review the Amendment Bill no later than the earliest practicable day after the end of two years**, as this will give all stakeholders an opportunity to outline their experiences and further refine the legislation.

**Conclusion**

Thank you for the opportunity to provide these comments. We hope our submission assists Treasury’s consultation.

Should you wish to discuss AIRA’s comments further, or require additional information, please do not hesitate to contact me at ian.matheson@aira.org.au.

Yours sincerely

Ian Matheson

**CEO, Australasian Investor Relations Association**