



Link Administration Pty Limited  
ABN 24 121 124 838

**All correspondence to:**  
Locked Bag A14  
Sydney South NSW 1235  
Australia

16 July 2021

Market Conduct Division  
Treasury  
Langton Cres  
Parkes ACT 2600

By email: [businesscomms@treasury.gov.au](mailto:businesscomms@treasury.gov.au)

**Consultation Submission from Link Group (Link) in relation to *Using technology to hold meetings and sign and send documents***

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 (Bill)*.

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 includes facilitating meetings on behalf of our clients. 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.

Currently we are working closely with our clients planning their upcoming AGMs (or other General Meetings and Scheme meetings) which remains difficult due to the ongoing health and safety impacts of COVID-19 and the continuing uncertainty around government-mandated restrictions. While we agree on most aspects tabled within exposure draft what we seek on behalf of our 400 plus clients is absolute clarity and certainty how they can plan for their upcoming meetings during these unprecedented times.

**Link is supportive of permanent change and the greater use of any technology in providing flexibility to our clients, and their shareholders. What we seek and encourage is that the Bill delivers the ultimate flexibility for issuers and produces the most substantive position incorporating wholly virtual meetings on a permanent basis without need for constitutional change which shall ultimately deliver an immediate solution for all Australian companies and align Treasury Laws with other global legislative instruments regarding the provisions of wholly virtual meetings.**

Section 249R

The current Bill does not adequately provide immediate certainty to companies planning their upcoming meetings as Section 249R limits the use of wholly virtual meeting services as currently drafted.

In the event of TLab1 and the Reform Bill passing by the earliest date of August only clients holding meetings up to 15 September 2021 can plan now with any form of certainty a wholly

virtual meeting or other; as should the Bills not pass they can still proceed under the 'no-action' position granted by ASIC. Companies with AGM dates after 15 September remain uncertain how to plan based on their constitutional allowance and in the current environment of government-mandated restrictions and timing of pending legislative change.

The mechanism of the Bill 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. From a practical application and operational lens, the timing of the Bill means that the vast majority of companies would be caught and disadvantaged by this requirement in their Constitution, as between the Bill passing and their next opportunity to put to shareholders/members a special resolution to change/update constitution may not be possible in order for the delivery of immediate benefit and certainty.

In the current environment, with government-mandated restrictions including lockdowns of Australian capital cities, this Bill creates a burden on companies and highlights a missed opportunity in the government objectives of use of digital technologies. A reasonable portion of Australian companies will be at a disadvantage by not being permitted by Treasury Laws to plan and prepare a wholly virtual meeting this upcoming reporting period. In addition, any proposed amendment to the Corporations Act, including these amendments, should be drafted to make it technology neutral – enabling it to be applicable in years to come. In our opinion, requiring a company to seek shareholder approval for a constitutional amendment to hold a virtual meeting is inconsistent with technology neutrality.

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 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).

What remains paramount is the health and wellbeing of all meeting participants and the obligation to provide a meeting that allows all investors a reasonable opportunity to actively participate, a meeting becomes at risk if an immediate event (for example, government-mandated restrictions) prevents a physical event or physical component from being able to proceed. A company incurs costs associated with hiring physical venues, catering, and security etc. and likely that company would be responsible for cancellation fees. If a company could from the initial outset prepare for a wholly virtual event many unnecessary burdens and financial costs would be removed.

Link has during COVID-19 under the temporary relief measures (Determination No.1 and No.3) facilitated a total of 644 AGMs using our proprietary virtual meeting platform, with a further 120 meetings completed from 1 April up to 9 July 2021 under the current ASIC 'no-action' position. Approximately 59% of these meetings were conducted as wholly virtual events. A wholly virtual meeting delivers greater levels of shareholder participation and attendance, as well as saving listed entities thousands of dollars in costs associated with venue hire and travel costs related to physical meetings and physical components.

**In order for investors to continue to receive clear, concise and timely meeting information during these unprecedented times and for companies to equally plan with more certainty, we strongly encourage the amendment to the Corporations Act to extend the allowance for permanent change to wholly virtual meetings irrespective of the constitution.**

At a high level, since various temporary relief measures took effect on 6 May 2020 (in conjunction with ASIC issued guidelines), for meetings using wholly virtual technology the following benefits have been realised:

- For Companies

1. Certainty that companies will meet their regulatory and compliance obligations by the holding of a wholly virtual meeting.
2. Significant cost savings in not having a physical meeting (for example, venue hire and related costs such as catering, security) travel and related expenses for directors/executives attending meetings with the ability to video conference/webcast directors into the meeting from various locations; and
3. More than ever before, the ability to engage members and allow them to participate in the meeting wherever they may be situated addressing the increasing demand for member accessibility while remaining safe and socially distanced.

- For Members

1. The ability for members to actively participate in meetings, irrespective of where they are located. The temporary relief measures have addressed the very real issue of delivering a meeting during a time of no public gatherings. It has also increased the level of participation in meetings as technology has enabled more global outreach. This is an important position given that over the last decade, we have observed a decline in attendance rates at physical meetings, e.g. in 2019 it was only 0.19% of all members.
2. Our statistics show an increase in engagement since the introduction of the various relief measures, with attendance higher since the introduction of a wholly virtual only component. Like a physical meeting, members logging in to view and vote in the meeting are also given the opportunity to ask a question. This option has been utilised with the volume of questions asked in line with a physical meeting. It is worth noting that, where appointed as proxy, the Australian Shareholder's Association has participated in all virtual meetings facilitated by Link as have other industry lobby groups.

#### Section 249S(8)

Link is supportive of the requirement to give shareholders/members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting as set out in S249S(1).

However, Section 249S(8) as currently drafted is ambiguous in that it seems to indicate that companies must offer both an oral and written method for asking questions or making comments at hybrid or wholly virtual meetings.

Link provided this functionality to our clients during the 2020 AGM season, of which 3.5% of clients 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 meetings. We suggest an amendment to indicate that companies are not required to offer both methods at the same meeting. Of course, maximum flexibility should be maintained so one method is not preferred over another.

#### **Summary**

In closing, we are supportive of permanent change and the greater use of any technology in allowing flexibility in providing meeting solutions. All parties have embraced the changes as demonstrated by successful outcomes already delivered under the various temporary relief measures. We now seek and encourage that the Bill delivers the ultimate flexibility of options

and produces the most substantive position incorporating wholly virtual meetings on a permanent basis without need for constitutional change for Australian companies.

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