



**AIRA**  
AUSTRALASIAN  
INVESTOR RELATIONS  
ASSOCIATION

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## **Submission to Treasury – Improving the technology neutrality of Treasury portfolio laws**

Thank you for the opportunity to provide this submission to Treasury and its consultation on the Treasury Laws Amendment (Modernising Business Communications) Bill (**the Bill**).

The Australasian Investor Relations Association (**AIRA**) strongly supports the swift passing of the Bill, which expands on the vital reforms contained in the Corporations Amendment (Meetings and Documents) Bill 2021. Together, these reforms will help modernise business and investor communications by improving the technology neutrality of the *Corporations Act (Cth) 2001* (**Corporations Act**), ensuring our Australia's corporate legislation is shepherded into the 21<sup>st</sup> century while providing immediate savings and business efficiencies for Australian companies.

Our aim in this submission is to support the key reforms of the Bill while highlighting a key structural challenge that is impeding the adoption of electronic investor and company communication with members. We hope to bring this issue to Treasury's attention and offer a pragmatic solution to ensure the Bill can function as intended.

### **About AIRA**

AIRA 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. We exist to provide listed entities with a single voice in the public debate on corporate disclosure and to improve the skills and professionalism of members.



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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 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.

## **A major step forward**

For more than a decade, AIRA has advocated for permanent changes to the Corporations Act to allow companies to leverage digital technology to distribute company and investor documents, validly execute and witness documents, and hold virtual and hybrid company meetings. Technology is a growing part of our national economy that our regulatory framework must support, not hinder.

To date, an antiquated approach toward company and shareholder communication has cost Australian companies time and money, and curtailed innovation. A technology neutral approach will unleash companies from the strictures of hard copy mail, printing costs and physical distance, which is why we fully support the reforms of the Bill that:

- Expand the scope of the global regimes that allow documents to be signed and sent electronically in the Corporations Amendment Bill. However, we do not believe it should be a requirement to send a hard copy of any of these documents in the event an email address exists for a member.
- Legislates relief for companies, registered schemes and disclosing entities sending documents to 'lost members' under the Corporations Act.
- Allows notices published in newspapers to be published in any accessible and reasonably prominent manner across Treasury portfolio laws.
- Updates payment provisions in Treasury legislation to ensure electronic payments can be made.

These reforms will provide our members with greater choice, efficiency and certainty, reduce regulatory burden and costs, and align the Corporations Act with the expectations of shareholders, investors and global markets.

Our position is the culmination of extensive engagement with our members, government and regulators, and has been detailed in a number of formal consultations over the past 24 months, including:

- The operation of the temporary legislation implemented by the Australian Government throughout the pandemic.

- Exposure draft legislation conducted by the Australian Government in 2020.
- Senate Economics Legislation Committee and Senate Economics References Committee's reviews of the *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021*.
- Treasury's consultation on the exposure draft of the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments*.
- Senate Economics Legislation Committee's consultation on the *Corporations Amendment (Meetings and Documents) Bill 2021*.

As we have previously argued, these reforms have been stress-tested throughout the pandemic and their success provides a solid evidence base for permanent regulatory change. It has demonstrated that technology neutrality and the use of electronic methods enhances investor engagement and creates flexibility for companies and their officers while ensuring compliance with underlying purpose of the law. Feedback from AIRA members has shown that digital communication with their members and other stakeholders is more efficient and effective than hard copy mail, and strongly reflects best practice business communication.

### Removing legacy barriers to digital investor communications

While we are highly supportive of the Bill, there remain structural challenges that will impede the adoption of electronic communication between companies, members and related stakeholders in the investor ecosystem, including securities exchanges and brokers.

Currently, companies cannot access the email addresses of a significant number of their shareholders because that information is either not included in the CHES system or brokers do not pass this information through that system due to privacy concerns. **This means most companies and shareholders who want to adopt electronic communication, cannot because electronic contact details are not made available to companies.** AIRA's members, which include the majority of ASX100 companies, have highlighted this issue repeatedly and are concerned that the major reforms of the Bill will be hamstrung by legacy structural issues in the investor chain.

To resolve these issues, AIRA recommends that provisions be added to the Bill that ensure:

1. **A member email address be added as a default and compulsory field of information when acquiring and registering shares in the CHES system.** Capturing this information and ensuring it is available at all points of the investment cycle as a matter of course is critical to ensuring digital communications becomes the established norm.
2. **Existing and future emails attached to broker sponsored holdings must pass through the CHES system automatically to share registries/listed entities.**
3. **Privacy concerns related to brokers sharing of member email addresses with the corresponding company are nullified.**

These legacy issues must be addressed if the Government is committed to its business digitisation agenda. Without these amendments, the Bill can only function as a half-measure to achieving these important reforms.

## **Digital by default**

AIRA supports the Bill's expansion of the range of documents that can be signed, executed and sent electronically. However, Australia's Corporations Act should be modernised so that the default setting for all company communication is in electronic form.

The Bill should be amended to require members and shareholders to proactively opt-in to receive physical copies of documents outlined in the Bill, as is currently the case with receiving physical copies of annual reports. The default should apply to all members and shareholders and in the circumstance where the company has a member's email address or not.

AIRA supports the position that all shareholders, considering their specific circumstances and needs, can choose to receive a hard copy. However, making digital communication for all documents the default setting will accelerate behaviour change in line with the Government's *'Modernising Business Communications'* reforms. This will reduce costs for companies and increase environmental benefits for the broader community.

## **Other issues for consideration**

### ***Shareholder Proposal Reform***

As previously recommended in our submission to Treasury on the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments*, we support reforms to the Corporations Act that would establish a 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 adjusted to include members with at least 5% of the issued capital of a company. We believe this definition could be a sensible statutory requirement for a range of other member rights, including the requirement for shareholder proposals, which is currently 100 shareholders or 5% of the issued capital of a company. We believe the 100 shareholder requirement should be dropped in favour of the 5% threshold only.

## Conclusion

Thank you for the opportunity to provide these comments to Treasury. We hope our submission assists with your consultation. Please do not hesitate to contact us if you require further information, input or clarification.

Yours sincerely

A handwritten signature in black ink that reads "Ian Matheson". The signature is written in a cursive style with a horizontal line underneath the name.

Ian Matheson  
Chief Executive Officer  
Australasian Investor Relations Association