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Manager, Market Conduct Division
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CORPORATIONS AMENDMENT (VIRTUAL MEETINGS AND ELECTRONIC COMMUNICATIONS) BILL 2020

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission in relation to the Corporations Amendment (Virtual Meetings and Electronic Communications) (the Bill).

Established in 2001, ACSI exists to provide a strong, collective voice on environmental, social and governance (ESG) investment issues on behalf of our members, who include 37 Australian and international asset owners and institutional investors. Collectively, our members own, on average, 10 per cent of every ASX200 company, on behalf of millions of beneficiaries. Our members recognise that ESG risks and opportunities have a material impact on investment outcomes.

The Annual General Meeting is a key accountability and transparency mechanism, and shareholders' ability to genuinely participate in an AGM is centrally important. We are concerned that the proposed Bill will negatively impact the way in which AGMs are conducted, encouraging shareholders to be treated as a distraction rather than providers of capital, including:

- a reduction in the quality of engagement and interaction between company representatives and shareholders;
- a lack of shareholder protection; and
- an enhanced ability for companies to avoid shareholder questions and prematurely shut down debate.

We support proposals included in the Bill to reduce cost and improve efficiency through the adoption of electronic communication to distribute meeting materials.

Our comments are therefore made in relation to participation in company meetings. Our view is that:

- the consultation period should be extended so that a transparent policy debate can take place; and
- hybrid meetings should replace virtual-only meetings as the minimum standard set out in the Bill.

Our more detailed comments are set out in this submission. I trust they are of assistance. Please contact me or Kate Griffiths, ACSI's Executive Manager – Public Policy and Advocacy, should you require any further information on ACSI's position.



Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors

Reduced engagement, interaction and transparency

The AGM provides the only opportunity for many shareholders to meet and ask questions of their representatives, the company's directors. The proposal to allow virtual-only meetings as the norm sets the regulatory bar too low. The Explanatory Memorandum states that it is important that the AGM facilitates an adequate level of transparency by providing an opportunity for sound communication between the directors and shareholders of a company. The Bill fails in this respect. The changes also disproportionately impact retail shareholders, and those without technology to attend.

We observe that the experience of the past months demonstrates that genuine interaction and engagement is lost in virtual-only meetings. While virtual-only meetings have been a necessity in the current extraordinary circumstances, a virtual-only meeting does not appropriately balance efficiency with accountability and transparency. Virtual-only meetings do not generally offer a two-way exchange between shareholders and company representatives. Very few company directors have been made available for questions during virtual-only meetings and, in some cases, shareholders have not been able to see company representatives for a large proportion of the meeting. In many cases, questions and comments have had to be made in writing (often well ahead of a company meeting) rather than 'real-time' which diminishes shareholders' opportunity to participate and interact with board members. Where directors are available, it is usually only the Chair. Accordingly, virtual-only meeting practice to date diminishes the opportunity for shareholders to observe the contribution and capability of directors to represent them.

The transparency and accountability provided by the exchange between shareholders and company representatives at an AGM can build trust. At a time where it is widely acknowledged that rebuilding trust in business is important, widespread use of virtual-only meetings on a permanent basis will serve to increase the lack of trust in business.

Lack of shareholder protections

While many companies appreciate the benefits of an exchange of views with shareholders, allowing virtual-only meetings as a permanent feature means that companies seeking to avoid scrutiny could exploit the lack of a physical presence at a meeting by limiting discussion, cherry-picking questions and ignoring follow up comments.

The proposed changes also disproportionately impact retail shareholders, along with those who cannot access the relevant technology.

The supplementary provision requiring that minutes of a meeting held virtually include questions or comments made by shareholders does not address the concerns and is insufficient to preserve the accountability and transparency offered by the AGM. AGM minutes do not replace the ability for shareholders to ask questions of company representatives in real-time. The minutes of the AGM do not need to be prepared until one month after the meeting, and therefore provide little comfort for shareholders whose questions were either not raised, or not answered during the relevant meeting.

Facilitating hybrid meetings

It is our view that virtual-only AGMs have been a necessity during the pandemic but should not become standard practice. Instead, hybrid meetings which allow for both online and in-person participation should replace virtual-only meetings as the minimum standard set out in the Bill. Alternative provision could be made for extreme circumstances such as the COVID-19 pandemic.

Reduction in cost and improved efficiency are noted as reasons for the changes outlined in the Bill. There is some doubt that the costs cited are actually significant in the context of a listed company¹. We also note that the costs are relative to the scale of listed companies with large companies holding often holding large meetings and small companies holding smaller meetings. In addition, total costs cited appear to be grouped together rather than considered separately. That is, the costs for hard copy mail outs appear to be grouped together with costs associated with holding in person meetings such as venue costs. It would be more appropriate to consider the costs separately, as cost savings could still be achieved through electronic communications of meeting materials, while maintaining a hybrid meeting model.

Where virtual-only meetings are required due to extreme circumstances, provision should be made to clarify that virtual-only meetings are not best practice, and that a reasonable opportunity for shareholders to participate must include an ability for shareholders to speak in real-time at the meeting, to make comments or ask questions of all directors (not just the Chair). A two-way exchange in real-time, with opportunity for shareholders to add follow up questions and comments to the discussion must be facilitated. Both advance requests and 'open microphone' approaches should be accommodated, and not filtered according to content (subject, of course, to standards of decency).

Virtual meetings should be in video format, audio-only is inadequate. An audio-only meeting does not allow shareholders to observe company representatives address the meeting and answer questions, as well as see the reaction of the audience.

The provisions requiring the questions and comments to be included as part of the meeting minutes should also be enhanced. The Bill should be amended to clarify that all questions and comments and their answers should be included, along with a corresponding requirement to disclose shortly after the meeting. Consideration could be given to using the ASX listing rule regime to implement these requirements for listed companies.

Lack of consultation and testing of online AGM process

We believe that the short length of the consultation period is completely disproportionate to the magnitude of the changes being proposed. The rationale provided for the short consultation period is to avoid any gap between the expiration of the temporary provisions and a permanent change. Other alternatives to remove this gap should be considered while preserving the opportunity for genuine consultation. The proposed approach risks a permanent outcome that has not been the subject of appropriate and considered consultation. While the draft Explanatory Memorandum states that the market has had an opportunity to test the changes through the application of the temporary provisions, this process is incomplete given that we have not yet finished the main Australian AGM season for the 2020 Financial Year. Further, this limited consultation period is occurring during the peak of the AGM season, a time when investors and companies are at their busiest and therefore hindered from devoting more attention to this important matter.

Accordingly, we recommend that the consultation period be extended.

¹Explanatory Memorandum paragraph 2.42 where costs are cited for a large physical meeting at \$300,000 and a medium physical meeting at \$100,000. Elsewhere, paragraph 2.30 suggests total costs are in the range of \$250,000 and \$1,000,000