

Clubs Australia Submission

Virtual Meetings and Electronic Document Execution

Clubs Australia welcomes the opportunity to provide feedback on the exposure draft of the **Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020**.

Clubs Australia represents 6,400 not-for-profit licensed and registered clubs, of which over 1,000 are public companies limited by guarantee (PCLG clubs) and thereby governed by the provisions on meetings in the *Corporations Act 2001* (Cth).

Clubs Australia supports reforms which will enable PCLG clubs to:

- use electronic means to provide documents related to a meeting – such as a notice of a members' meeting;
- hold a virtual or hybrid meeting; and
- take and keep meeting minutes electronically.

Regarding electronic notices, Clubs Australia recommends amending the exposure draft to clarify that a company may give a member a meeting notice electronically even if the member did not “opt-in” or elect to receive the notice electronically.

Benefits to the industry

Clubs spend substantial sums of money posting paper meeting notices to their members. For example, Eastern Suburbs Leagues Club, a large club in Sydney, spends approximately \$70,000 posting paper notices to the Club's 41,000 members.

Clubs Australia estimates that enabling clubs to send electronic meeting notices will deliver regulatory savings of approximately \$8.3m and 27,500 staff hours per year.¹ Clubs Australia also estimates that the reforms will save more than 41 million pieces of paper per year.

Clubs are not-for-profit entities and they are commonly one of the largest – if not the largest – employer in their community. Accordingly, any regulatory savings will be used by clubs to retain employees and make contributions to their communities, for example by supporting junior sports, veteran welfare and disability services.

Such relief will particularly be beneficial to clubs as they recover from the significant effects of COVID-19, in which approximately 100,000 club employees were stood down with many failing to return to work.

Moreover, as clubs recover from COVID-19, industry consolidation through amalgamation will be critical to the survival of many clubs, and the ability to hold virtual meetings and send electronic notices will significantly reduce the cost of amalgamation.

¹ This estimate excludes the cost of stationary, printing and electricity.



This is because an amalgamation involves a minimum of three members' meetings, including one meeting which is a formality and need not necessarily be held in a physical location. The amalgamating clubs must incur substantial costs of sending paper notices and occupying a large physical space for each meeting. These costs regularly exceed \$100,000.

Electronic meeting notices

Licensed and registered clubs are not-for-profit, mutual organisations which provide a range of hospitality, entertainment, social and recreational activities.

The majority of PCLG clubs are located in New South Wales because the *Registered Clubs Act 1976* (NSW) requires clubs to be PCLGs, however some larger clubs in other jurisdictions are also PCLGs.

Clubs are relatively unique in that members are also the primary customers. In addition to the requirements for membership in s 231 of the Corporations Act, the mechanism for a person to become a member of a club is also governed by bespoke state and territory legislation as well as the club's constitution.

For instance, in NSW a person may only become an ordinary member of a club if they are elected to membership at a members' or directors' meeting, among other conditions.

Since a club's members are also commonly their customers, or people who otherwise use the club's services, clubs typically collect a person's email address and/or mobile number at the time the person applies for membership for marketing and communications purposes.

Despite clubs holding the email address or mobile number for the majority of their members, the club cannot send an electronic meeting notice to the address. This is because, at the time the person applied for membership, the club did not ask the prospective member to "nominate" or "opt in" to receive, or access, the notice electronically pursuant to s 249J(3) of the Corporations Act.

Due to this effective limitation, clubs are required to send paper meeting notices to all or most of their members by post.

There are significant monetary and environmental costs of sending paper notices. To demonstrate the burden on clubs, it is noted that the largest club, Mounties Group, has approximately 145,000 members.

As noted earlier, Clubs Australia estimates that enabling clubs to send electronic meeting notices will deliver significant red-tape savings. These savings will be realised if electronic communications become the default method for a member to receive a meeting notice.

A member's rights can also be preserved by empowering members to elect to receive a meeting notice by post, which is already a feature of the exposure draft.



Clubs Australia submits that a PCLG club should be able to send a notice to a member's email or mobile number (e.g. as a PDF attachment, or sending an email or text message which includes a link to an online location containing the notice) if:

- the person became or becomes a member of the club, either before or after the commencement of the proposed legislation, and
- at the time the person applied for membership, the person provided their email address or mobile number to the club but did not expressly nominate to receive meeting notices at the electronic address.

Paragraphs 1.46 and 1.47 of the draft explanatory materials appear to confirm that the legislation is intended to achieve this outcome.

However, the exposure draft does not appear to be consistent with the explanatory materials because the exposure draft states that a company may only send an electronic communication to a member if “there is a nominated electronic address in relation to the recipient”.² It is unclear whether the word “nominated” – which is currently used in s 249J of the Corporations Act, giving effect to the “opt in” requirement – would require a member to opt in or otherwise consent to the address being used to send notices electronically.

Accordingly, Clubs Australia recommends amending the Bill to clarify that a member does not need to opt in or elect to their email address being used to send – or provide instructions to access – meeting notices.

Virtual meetings

During the COVID-19 pandemic, many clubs have held virtual or hybrid meetings pursuant to the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* and its predecessor. These Determinations have enabled clubs to comply with their obligations to hold members' meetings where meetings in a physical location have not been viable due to limitations on group size or social distancing.

Moreover, by giving companies the opportunity to hold meetings using technology, clubs have been able to enhance participation of members who may have health concerns about attending a physical gathering.

The feedback from clubs is that virtual and hybrid meetings retain the same level of participation, discussion and debate that a physical meeting involves. By preserving the capacity for members to participate, virtual and hybrid meetings have provided for transparency and accountability of the clubs' affairs.

Clubs Australia submits that the exposure draft includes sufficient protections of members' rights, including the retention of the condition that members must have a reasonable opportunity to participate in the meeting.

² Proposed s 253S(4)(b).



Clubs Australia supports the provisions of the exposure draft which would permanently enable companies to hold meetings using technology.

Conclusion

Clubs Australia appreciates the opportunity to provide feedback and looks forward to further consultation. Should you wish to discuss this submission further, please contact Simon Sawday, Manager of Policy and Government, on (02) 9268 3028, or by email at Ssawday@clubsnsw.com.au.