



OWNERSHIP MATTERS

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Manager
Market Conduct Division
The Treasury
Parkes ACT
Email: businesscomms@treasury.gov.au

Making permanent reforms in respect of virtual meetings and electronic document execution

Dear Manager,

Thank you for the opportunity to make a submission on the Exposure Draft of the Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020. Ownership Matters (OM), formed in 2011, is an Australian owned governance advisory firm serving institutional investors. This submission represents the views of OM and not those of its clients.

Our comments are confined to the proposed changes making virtual meetings of shareholders or investors in registered managed investment schemes a permanent feature of the Australian corporate landscape. The temporary relief allowing holding of virtual meetings extended by the Australian Government was an appropriate and necessary response to the public health risks created by the COVID-19 pandemic. Creating a regime however which outside of such compelling public health reasons allows the management of listed entities to avoid ever having to physically meet securityholders is not an appropriate regulatory response. It is also not clear why such haste in enacting such a permanent change to the accountability regime for listed entities – with a public consultation period of just 12 days - is required.

The primary concern relates to the proposed repeal of s.249R & s.252P and their replacement with new provisions making explicit that companies and registered managed investment schemes may hold meetings of members that are entirely virtual. The rationale advanced for making permanent the temporary emergency changes in response to COVID appears to be cost-savings and efficiency, with the explanatory memorandum noting data from entities representing company management that meetings of listed entities may cost \$250,000 to \$1mn.

This “cost” presented comes from an unverified data source and is unlikely to represent the likely savings on offer from virtual meetings given that most of the expense for holding a meeting comes with the distribution of notice of meeting and proxy materials (and allowing greater electronic distribution, as the amendments propose, would reduce this cost). Even if all of this expense could be eliminated, it should be put in context: a cost of \$1mn, likely to apply only for larger listed entities, represents ~28 weeks of the fixed pay for the average CEO of an ASX100 company or 10 weeks of an ASX 100 CEO's average realised pay (inclusive

of incentives received).¹ This cost appears a reasonable expense to ensure shareholders, especially retail shareholders, are able to physically meet, question and hold accountable the stewards of their capital. Most listed entities also seek to hold board meetings at the same time as annual meetings, sharing the cost burden given director and management travel costs can be substantial. In addition the proposed changes increasing the ability of entities to deliver notices electronically should also reduce costs.

The primary problem the amendments seem designed to solve is the potential for directors and executives of large listed entities to encounter temporary discomfort from having to physically meet ordinary investors. We do not observe such disdain for travel at shareholder expense when attending the Australian Open final, the Lord's Test or the marquees at the Melbourne Spring Carnival which seem to be a regular feature of many directors' calendars.

In the absence of a public health crisis such as a pandemic, allowing listed entities to hold exclusively virtual meetings does not appear to serve any compelling policy purpose other than adding to the already substantial protections directors and executives have from suffering such temporary public discomfort. It appears more appropriate to keep virtual meetings as a temporary relief measure for if and when Australia next faces a pandemic or similar crisis.

As made clear above, OM's position is the Corporations Act should not be amended to permit meetings of companies or registered schemes to be held entirely virtually. Should the Government elect to proceed with these changes however it is critical that the proposed s.253Q be retained, which requires that any form of technology used to hold a meeting offer all investors a reasonable opportunity to participate, as should the proposed changes requiring voting at meetings held using technology to be conducted through a poll. Further, OM recommends that should the changes relating to the ability to hold meetings only through virtual means not be adopted that the Act be amended in any case to require any meeting conducted across multiple venues using technology to have resolutions decided on a poll.

We draw the reader's attention to the Parliamentary Joint Committee on Corporations and Financial Services' Report: *Better shareholders – Better company - Shareholder engagement and participation in Australia, June 2008*. There are many recommendations in that report including relating to the absence of a fully electronic audit trail for the lodgement of proxy votes and the examination of a revised record date for the purposes of determining voting entitlements that should be acted upon as part of this suite of reforms.

We have also attached a copy of an audit OM did for the Australian Council of Superannuation Investors in 2012 which identified multiple instances of missing votes cast on behalf of six major investor groups. If we are taking the time to reform the AGM, OM believes that we should also take a moment to ensure that the infrastructure is in place to ensure that investor votes are properly counted. There is widespread industry support for reforms to the "proxy vote" process and counting system.

Similarly the reforms should examine how, in a virtual meeting environment, any response to a question by an auditor tabled under s.250T(4) of the Corporations Act can be made available to all members of the company. Our suggestion is that listed companies should be required (with no exceptions) to file these notices with the ASX at the conclusion of the meeting.

¹ The ACSI longitudinal study of CEO pay found average fixed pay for an ASX 100 CEO in 2019 was \$1.892mn and average realised pay was \$5.24mn. Available at <https://acsi.org.au/research-reports/>.

Please feel free to contact us concerning any aspect of our submission. For the avoidance of doubt we are happy for our submission to be made public.

Yours sincerely,

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Ownership Matters Pty Ltd