

16 July 2021

Market Conduct Division
Treasury
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ASA SUBMISSION - TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL 2021: USING TECHNOLOGY TO HOLD MEETINGS AND SIGN AND SEND DOCUMENTS

Dear Madam/Sir

Thank you for the opportunity to comment on the Treasury Laws Amendment (Measures for Consultation) Bill 2021: Using technology to hold meetings and sign and send documents (Bill).

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

Our comments below relate to exchange-listed companies and their engagement with their shareholders, and particularly apply to companies with many shareholders and the matters covered in this Bill.

While we understand the desire to have limited number of exceptions to any of the rules covered in this Bill the sheer number of shareholders of many listed entities and the range of financial literacy amongst these shareholders support a differential for listed companies. Our comments do not apply to what is expected from other types of entities such as not-for-profits and private companies.

ASA is generally supportive of the intent for the Bill to facilitate technology neutral delivery of shareholder communications and, to a limited degree, shareholder meetings.

We do not support shareholder meetings of listed companies being held as virtual-only meetings outside of pandemic and other extreme circumstances. The virtual meeting is unable to replicate the feel of a physical or hybrid meeting given technological solutions in general use at this time. This comment applies both at the company end and in the homes of shareholders across Australia.

Until such times as shareholders at a virtual meeting are able to see what questions submitted online are asked, answered and ignored in the meeting, the level of transparency and ultimately trust will be lower than for a physical or hybrid meeting.

For those listed companies finding managing hybrid investor meetings more difficult than either a physical-only or virtual-only, we recommend engaging with companies that successfully deliver hybrid meetings to large shareholder numbers. Innovation such introduction of a moderator to facilitate questions from within a physical location and online should be considered.

ASA believes companies should seek explicit shareholder approval to hold virtual member meetings in a standalone resolution rather than an omnibus update to the company constitution after this Bill has passed. This is a respectful way for companies to engage with their shareholders.

We would expect the shareholders' decision to support the resolution will be highly correlated to the trust they have in the company now and in the future. We also consider allowing previous constitutional changes to stand will reduce shareholder trust and if permitted mean that future resolutions will be more likely to be voted against "just in case" subsequent changes make them less palatable.

We support all the characteristics outlined in 249S ***Reasonable opportunity to participate***, but note s249S(1) "A company that holds a meeting of its members must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting" is a matter that can only be judged by the members. We will rely on periodical reviews by ourselves and other investors and communications similar to [ASIC's guidelines for investor meetings using virtual technology](#) to establish if that opportunity has been provided.

With respect to Subsection 250J(1) substituting (1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded: ASA has long argued determining the outcome of voting on a resolution should be carried out by a poll for companies included in the S&P/ASX200 Index. We believe this should be extended to companies included in the S&P/ASX300 Index given their size and number of shareholders.

ASA supports the introduction of s253V and Company members' rights to request observer on poll and s253V A Company members' rights to request report on poll, as a measure to build trust in the integrity of meeting procedures.

In relation to electronic communication of documents and recording and keeping of minute books, ASA's position remains electronic communications should be default with an "opt in" for mailed communications. We support the absence of stipulation as to delivery technology to enable development and evolution of better ways of providing such communication. We also support the ongoing opportunity for shareholders to provide a standing order to receive their communications by mail to overcome difficulties they may experience receiving electronic communications reliably whether due to individual set up or due to location.

We understand the application and transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (Measures for Consultation) Act 2021, mean once the Bill is passed, the amendments will not apply where an investor meeting is held before 16 September 2021, or if the Notice of Meeting has been announced to the exchange.

We are concerned that the date of the passing of the Bill will cause timing issues for the requirement to notify shareholders of the opportunity to opt into receiving company communication by post. Many listed companies will be issuing their notice of annual general meeting in September and October, which will provide an opportunity to advise shareholders the process for opting in. Companies should be aware this may be frustrating for shareholders who have proactively provided existing instructions to post all or certain communications.

Given the range of technological glitches experienced by shareholders (from hardware and software failures to lock out from email address) we believe there should be the opportunity for shareholders to make an ad hoc request for any documents to be posted.

ASA strongly support the review of the of the operation of this Act no later than the earliest practicable day after the end of 2 years after this section commences.

If you have any questions about these comments or other matters, please do not hesitate to contact me, or Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely

A handwritten signature in black ink that reads "John Cowling". The signature is written in a cursive style with a distinct loop at the end of the name.

John Cowling
Chief Executive Officer
Australian Shareholders' Association