

19 July 2024

## **Submission - Statutory Review of the Meetings and Documents Amendments**

Australasian Centre for Corporate Responsibility

Attn: Meetings and Documents review  
c/- Better Business Communications Unit  
Market Conduct and Digital Division  
The Treasury

Submitted via email to: [meetingsanddocumentsreview@treasury.gov.au](mailto:meetingsanddocumentsreview@treasury.gov.au)

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On behalf of the Australasian Centre for Corporate Responsibility

Dear colleague,

The Australasian Centre for Corporate Responsibility (ACCR) is grateful for the opportunity to feedback on the effectiveness of the amendments made to the *Corporations Act 2001* by:

the *Corporations Amendment (Meetings and Documents) Act 2022* and  
Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

ACCR is a philanthropically-funded, not-for-profit, research and shareholder advocacy organisation, focused on the investment risks and opportunities brought about by the global energy transition. We have a portfolio of shares that we hold for the purpose of engaging with companies, including through the filing of shareholder resolutions and attendance at company meetings. We are a member of both the UN Principles for Responsible Investment (UNPRI) and the Responsible Investment Association of Australasia (RIAA).

In October 2020, ACCR made a submission to the *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020* (Bill): Proposed Permanent Reforms in Respect of Virtual Meetings and Electronic Document Execution. We submitted that:

'The Bill's objective to make permanent the virtual meeting provisions that were temporarily introduced in response to extraordinary circumstances, are ill-conceived and poorly developed. The Bill's virtual meeting proposals do not take into account the rights and interests of shareholders, and are inconsistent with the corporate governance objectives of the Corporations Act'.<sup>1</sup>

Since 2020, we have filed 35 shareholder resolutions with over a dozen ASX-listed companies, under the *Corporations Act*. Our experience since 2020 has affirmed our previous position, quoted above.

ACCR would welcome the opportunity to discuss these matters further.

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<sup>1</sup> <https://treasury.gov.au/sites/default/files/2021-03/c2020-119106-accr.pdf>

# Response to consultation questions

## Consultation questions on meetings

### **1. How has the experience of running company or registered scheme members' meetings changed since the amendments? What have been the effects of the amendments on the costs of holding AGMs or other meetings?**

N/A to ACCR.

### **2. How have the amendments affected members' participation in meetings and has this affected the exercise of shareholder rights or corporate governance?**

In our 2020 submission to the Proposed Permanent Reforms in Respect of Virtual Meetings and Electronic Document Execution, we noted that we had experienced several issues with attending AGMs in the virtual 2020 season, and raised concerns about the possibility that these would persist beyond the 'Covid era'.

It is ACCR's view that retaining the in-person component of AGMs is essential. We disagree with changes to *The Corporations Act* allowing companies to hold virtual-only meetings, if expressly required or permitted by that company's constitution.

Our position remains that:

"The interpersonal element of physical shareholder meetings is an important component of the corporate governance environment... [permitting] companies to adopt virtual-only proceedings, thereby avoiding any in-person, transparent interactions with shareholders... is not in the interests of shareholders or public companies."<sup>2</sup>

As Bowen CJ in *Re Compaction Systems Pty Ltd* [1976] 2 NSWLR 477, 485 notes:

*The right to receive notice of a meeting, and to attend, and to be heard, is not an insubstantial right. The right to advance arguments and to influence the course of discussion may in some circumstances have an effect, even a decisive effect, on the decision reached.*

The right to attend and be heard is diminished in a virtual-only environment, as our experience of the 2020 AGM season demonstrated. Genuine, two-way engagement between company stewards (directors) and owners (shareholders) is made more difficult in online-only AGMs. As we noted in 2020:

"The asking of questions in person affords shareholders a right of reply. If shareholders feel a question has not been sufficiently answered they are able to respond or follow up. What is said

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<sup>2</sup> <https://treasury.gov.au/sites/default/files/2021-03/c2020-119106-accr.pdf>, p.2

may influence the questions or voting decisions of other participants. They are able to assess the entire board's non-verbal communication and body language."<sup>3</sup>

Even in in-person and hybrid AGM environments, we have often observed that opportunities for genuine shareholder engagement are constrained. Companies are deploying a number of strategies to tightly manage proceedings, which (deliberately or not) curtail shareholder participation and engagement. These practices include:

- Requirements to pre-register questions
- Shareholder questions being ignored
- Shareholder questions being aggregated (i.e. not asked and answered individually)
- The introduction of quotas for questions (e.g. one or two per person and/or per agenda item)
- Shareholder questions not being displayed (i.e. only read, or paraphrased)
- Shareholders being prevented from entering into dialogue with companies at an AGM (for e.g. via microphones being cut off)

Our observation in 2020 that companies have often '... been more concerned with the performative optics of a virtual meeting than in providing shareholders with a reasonable opportunity to question the board' is unfortunately still valid in 2024.<sup>4</sup>

### **3. If improvements are needed to better facilitate members' participation and corporate governance, what improvements could be made to the conduct of online or hybrid meetings?**

All shareholders should be given a reasonable opportunity to see, hear, understand and properly participate in the process of company business. At an AGM, this participation includes not only voting, but deliberation.

ACCR supports hybrid AGMs (in-person and online) as the appropriate format for this to occur. An online meeting component has the benefit of improving accessibility and transparency. The in-person component however should be mandatory, as it enables genuine discourse between shareholders and managers. The Australian Shareholder Association (ASA)'s recent Investor Sentiment Survey found a majority of respondents prefer a hybrid AGM format, where both in-person and online participants can vote and ask questions.<sup>5</sup>

We suggest the following improvements:

- Require members' meetings to be held at a physical location and disallow wholly online meetings, per the *Corporations Act* pre-amendments
- Require all questions put to a meeting to be displayed to all shareholders, for example via recorded minutes (this was previously proposed - (Schedule 1, items 25 and 36, paragraphs 251A(1)(aa) and 253M(1)(c) of the *Corporations Act*))

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<sup>3</sup> <https://treasury.gov.au/sites/default/files/2021-03/c2020-119106-accr.pdf>, p.2

<sup>4</sup> <https://treasury.gov.au/sites/default/files/2021-03/c2020-119106-accr.pdf>, p.3

<sup>5</sup> <https://www.australiashareholders.com.au/2024-focus-issues-for-asx-listed-companies/>

**4. Is the use of wholly online meetings an objective of companies and registered schemes? Why or why not? If it is the objective, what is impeding the greater use of wholly online meetings by companies and registered schemes?**

As outlined in question 2, it is ACCR's view that retaining the in-person component of AGMs is essential. In-person AGMs enabling genuine engagement between shareholders and company directors remains a vital feature of corporate democracy.

**5. Have you experienced technological issues when running or attending a meeting with an online component? If yes, what were they, were they addressed, and how did this occur?**

In our 2020 submission to the Proposed Permanent Reforms in Respect of Virtual Meetings and Electronic Document Execution, we noted that we had experienced 'several recurring issues with [attending] virtual AGMs'.<sup>6</sup>

For AGMs with an online component, we continue to experience occasional issues with unstable technology, including difficulty submitting questions, and difficulty logging in to online AGM platforms. These issues undermine shareholder participation.

**6. Have you observed any significant differences in governance, shareholder participation, meeting conduct or quality between companies that have listed after the 2022 amendments and those that listed prior to the amendments?**

No additional comments to make.

**7. How have the mandatory poll voting requirements affected the conduct of meetings and determining the opinion of members?**

N/A to ACCR.

**8. Have there been any issues with submitting or complying with requests for independent reports on polls?**

N/A to ACCR.

**9. Are there lessons that Australia could take from other jurisdictions' experiences with online or hybrid members' meetings?**

In overseas jurisdictions, some companies are prohibiting the use of laptops and devices inside AGMs. Thankfully, we have not noticed this practice occurring in Australia.

**10. How have the amendments affected the effective operation of directors' meetings?**

N/A to ACCR.

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<sup>6</sup> <https://treasury.gov.au/sites/default/files/2021-03/c2020-119106-accr.pdf>

## Consultation questions on treatment of documents

### **11. What, if any, issues have been experienced with the giving and sending or receipt of electronic meeting-related documents? How could these be addressed?**

None to note. ACCR remains supportive of these changes as facilitative of expedient and efficient communications in the modern corporate environment.

### **12. What, if any, issues have there been with the process for making elections or with entities following the elections of members regarding meeting-related documents? If yes, how could this be improved?**

N/A

### **13. What, if any, issues have been experienced with the electronic signing of documents? If yes, how could these be improved?**

None to note.

### **Additional comments**

Under section 672DA of the *Corporations Act*, investors have the right to request a copy of the register of information about relevant interests for a company which is required to be kept and made available by registry service providers. Our experience in requesting these documents has resulted in physical printouts being delivered by the company (thousands of pages), which then need to be digitised for analysis. The time and cost involved in this process is prohibitive. Digital versions of the register of relevant interests should be made available to those with rights under s672DA to request the materials.