

19 July 2024

Meetings and Documents review
c/- Better Business Communications Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
Parkes ACT 2600

Submitted: Online via meetingsanddocumentsreview@treasury.gov.au

**ASA SUBMISSION – TREASURY – STATUTORY REVIEW OF THE MEETINGS AND DOCUMENTS
AMENDMENTS – JULY 2024**

Dear Dr Austin

As the peak member organisation representing individual investors and shareholders, the Australian Shareholders' Association (ASA) appreciates the opportunity to provide feedback on the operation of the effects of the amendments to the Corporations Act 2001 (Corporations Act) made by Schedule 1 of the Treasury Laws Amendment (2021 Measures No.1) Act 2021; and the Corporations Amendment (Meetings and Documents) Act 2022 in accordance with the Terms of Reference for the Review.

ASA is uniquely placed to comment on the operation of Annual General Meetings (AGMs). As noted in the consultation paper, retail investors are likely to rely more heavily on the AGM to obtain information and express views directly to those responsible for running the company. ASA's corporate representatives are volunteers drawn from our membership base, who through training and diligent application, have represented many retail shareholders at many company meetings. On average for the past five years, ASA has represented over 35,000 retail shareholders at over 260 company meetings each year.

We consider that the requirements for publicly listed companies should be of the highest standard and differ from those for smaller private and not-for-profit entities. Listed companies benefit from their access to capital, including funds provided by the 7.7m retail shareholders who hold on-exchange investments¹ in aggregate, and the tens or hundreds of thousands of shareholders for our largest companies², through their public listing.

ASA submitted a comprehensive range of comments in 2021 on the proposed changes to virtual meetings and the electronic communication of documents in relation to publicly listed companies³.

¹ [Australian Investor Study 2023](#)

² Commonwealth Bank reports 869,355 shareholders in its 2023 Annual Report.

³ See attachments

In brief, our previous comments can be summarised as follows:

1. AGMs of publicly listed companies should be held as hybrid meetings, being a combination of physical and virtual, not exclusively via virtual meetings.
2. Electronic communications should be the default option, with an "opt in" for mailed communications at the shareholder's election.
3. Electronic execution of company documents is welcomed.

Current Statutory Review

In relation to the current review, we respond to the consultation questions at the end of our contribution, after our comments on the variety of meeting types, when meetings matter, and the challenges of communicating flexible meeting arrangements.

Once again, we reiterate that our observations pertain exclusively to publicly listed companies, and predominantly in the context of our representation of retail level Australian shareholders.

Types of AGM delivery

We describe the ways in which an AGM can be delivered as follows:

Full hybrid meeting – a meeting held in a physical location with the opportunity for shareholders to participate fully online. That is, with the ability to vote during the meeting and to ask questions through typing them on the meeting platform or voice questions by phone or other technology.

Hybrid meeting (no voice) – as for a full hybrid meeting, but with no voiced questions from online shareholder participants.

Physical only meeting with webcast – Shareholders watching online can only vote by proxy or direct vote submitted 48 hours prior.

Physical only meeting without webcast – if not at the physical meeting, voting must be by proxy and submitted 48 hours prior. Shareholders unable to attend are reliant on reading the ASX announcements of the Chair and CEO addresses and the meeting voting results for any information of the event.

Virtual only meeting – online participation only, if not participating in the meeting online, voting must be by direct vote or proxy and submitted 48 hours prior.

ASA expects, and would support mandating, that AGMs of publicly listed companies should be held as hybrid meetings, being a combination of physical and virtual meetings, with or without a voice option for shareholders attending remotely. The advantage of having a "voice option" for shareholders is the ability to voice a question to the company, and it also enables a follow-up question when the answer is unclear (our favourite is "Is that a yes or a no?") or the question has been misunderstood.

Voice your question

With the different types of AGM delivery, we see having the option to attend a physical meeting as an important backstop for governance. When shareholders doubt the directors' stewardship of the company,

they need the opportunity to look the directors in the eye, and to pose questions with an option for follow-up questions to clarify the question, or request clarification of the answer or further information for completeness.

Voice needed to enable the evolution of virtual only meetings to replicate a physical meeting

We expect technology and practice to evolve, and the inclusion of voice to become more seamless. With written questions, we have already seen the added ability for an online participant to review their questions and delete them, as well as direct them to a particular resolution. In time we hope all the meeting participants will be able to see what questions have been queued and to vote on which they want answered.

Company meetings – when does attendance and engagement matter?

Many AGMs and other company meetings appear merely procedural, with shareholders supporting the resolutions at rates above 95% of shares voting being “for” the resolutions and in line with the board’s recommendation. With the bulk of AGMs being held in October and November, shareholders regularly must choose which meeting they will attend, as well as fitting the attendance into their daily life. ASA attends around 150 meetings during this period each year.

There is an assumption that shareholders are complacent and always vote in line with the board recommendation, but this is a gross generalisation that ignores the important exceptions where the board withdraws a resolution, and where a resolution is not carried or comes close to failing.

Resolutions with low support in proxies can be withdrawn before the meeting

The board is aware of the direction of lodged proxy votes (which must be lodged 48 hours but are made from the date of release of the notice of meeting at least 28 days prior to the meeting date) and engagement may indicate shareholders are unhappy with a proposal. Examples of withdrawing resolutions include Dexous and Brambles in 2021, with both companies withdrawing their resolutions to change their constitutions to allow virtual only meetings. AGL Energy withdrew its demerger proposal in 2022, effectively cancelling the scheme meeting.

Shareholders vote some resolutions down

However, there are also deterministic meetings, where the shareholders who vote at a meeting react to additional information provided, and inform the board of their views through their votes. While the examples below were physical-only meetings, it demonstrates that circumstances dictate which meetings are crucial.

One such meeting was the Westfield Retail Trust meeting, where securityholders met on 29 May 2014 to consider the demerger of Scentre Group. That meeting was adjourned by introduction of a non-binding resolution which was voted on at the meeting. That shareholders voted to adjourn the meeting in order to allow an Independent Board Committee to ensure that all Securityholders are aware of, and had the opportunity to consider, the impact of new information that was announced earlier that day by Westfield Group. It is worth noting that the Chair of the meeting did not vote proxy votes held by him in relation to the adjournment, so the outcome was determined in the room.

Another meeting where the votes in the room changed during the meeting to reflect shareholder will, was the Navitas AGM held on 15 November 2018. The proxies prior to the meeting showed a significant vote against the re-election as a director of then Chair, Tracy Houghton. The negative vote reflected the opinions of some shareholders of the appropriateness of the board’s rejection of a proposed takeover scheme.

The proxy numbers were as follows:

| For | Against | Proxy’s Discretion | Total | Abstain |
|-------------|------------|--------------------|-------------|------------|
| 158,081,364 | 73,620,777 | 16,680,405 | 248,382,546 | 38,183,947 |
| 64% | 30% | 7% | | |

After the poll was called, the poll numbers were as follows:

| For | Against | Total | Abstain |
|-------------|-------------|-------------|------------|
| 134,758,080 | 130,520,631 | 265,278,711 | 42,613,215 |
| 50.8% | 49.2% | | |

This meant Tracy Houghton was re-elected, but it is one of the closest voting outcomes we have seen. We note the takeover scheme proceeded at a higher price in the following year, which we consider benefitted the minority shareholders. Also note that the poll reduced the “For” votes to below those directed via proxy. This highlights that shareholders can change a previously directed proxy vote by voting at the meeting, and that proxy votes are not locked in until voting at the meeting closes.

Challenges of communicating flexible meeting arrangements

Shareholder expectations for meeting arrangements are built by their experience with individual companies as well as the different companies they hold shares in. As the companies have varied their individual meeting types, shareholders expecting hybrid meetings have been disappointed when they find their options to participate in meetings are limited to physical only (with or without webcast) or virtual only meetings.

We acknowledge individual companies have improved their communication of what shareholders should expect at each meeting.

We emphasise companies must ensure that their shareholders are not misled by prior experience, as we have many complainants disrupted and surprised by a different delivery method for the AGM to what they expected. For example, a company’s message of an “online” option to participate in an AGM, has been taken to enable online participation, and is not satisfied by offering a passive watching of a webcast.

Consultation questions on meetings

1. How has the experience of running company or registered scheme members’ meetings changed since the amendments?

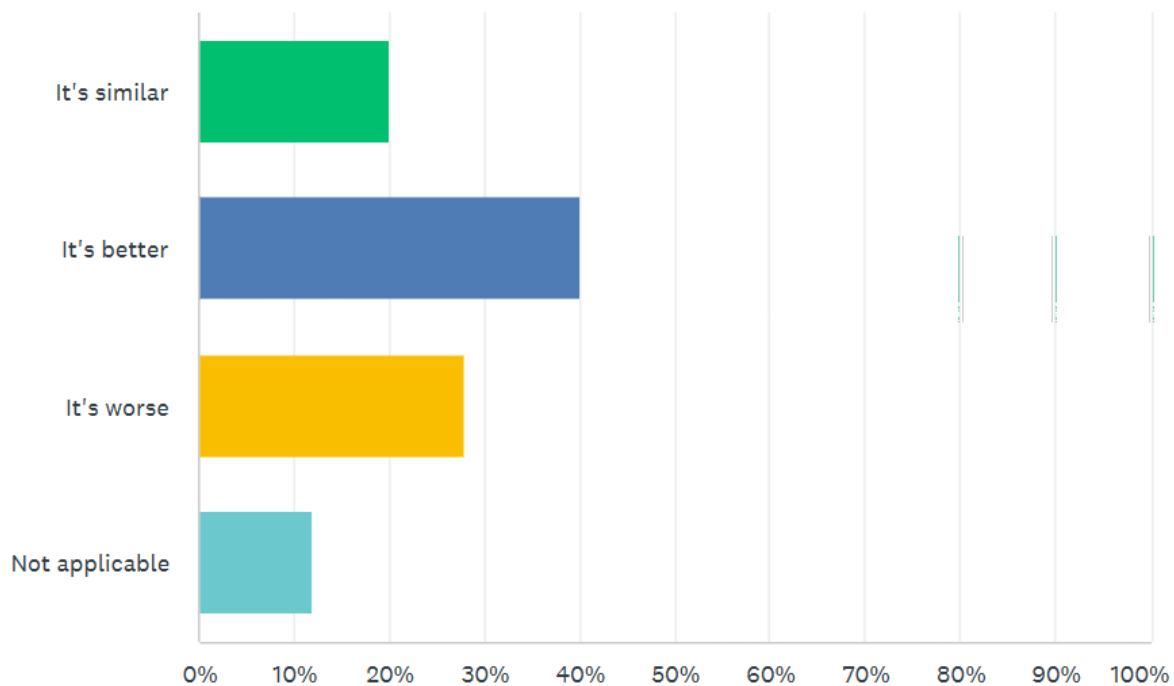
- **What have been the effects of the amendments on the costs of holding AGMs or other meetings?**

We look forward to the information being provided by listed companies in response to this question, and an indication how the choices the company makes impact the cost of the AGM. ASA has run its AGM as a hybrid

meeting for six years, to allow attendance by members who are unable to physically attend. The AGM is held at the same time as ASA’s annual Investor Conference, which we believe lifts physical attendance in general, as well as from members who reside out of the state in which the meeting is located.

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

We recently asked our members “Has the experience of attending AGMs and other formal company meetings changed for you since the requirements for the company were amended?”



ASA has advocated for hybrid meetings for many years, and many of the larger companies have held their AGMs as hybrid meetings (no voice) for a similar time period. The number of hybrid meetings has increased over the years, and we applauded CSL in taking a first step and hosting its first hybrid AGM in 2023.

Those respondents to our member survey that considered the experience had improved noted that they were able to attend more AGMs for their companies, and made the following comments:

- allows me to attend meetings that I otherwise couldn't;
- where offered, a full hybrid meeting is an improvement for interstate meetings;
- it's good to be able to access virtual meetings in other states;
- hybrid meetings allow me to attend an AGM from workplace and when physical meeting close to work to attend in-person;

- while there are meeting that I specifically want to attend in person, there are others that I am happy to do with full hybrid, especially considering that to go to a face-to-face meeting means over 3 hours of travelling for me. I have also been able to attend two meetings at the same time. It gives me so much flexibility. I'm not so happy about online meetings where I can't vote and ask questions;
- online convenience balances in person experience; and
- optionality of physical vs. virtual meetings.

Of those survey respondents that felt their experience of AGMs is worse, the difficulty in receiving the Notice of Meeting by post played into their view of being marginalised. They provided the following comments:

- shareholder questions are unanswered and there is no option of follow up questioning;
- the moderation of written questions can dull the impact of seeing and hearing the questioner;
- in many cases virtual meetings are really poor for questioning. If the Chair fobs off the question (common) there is no ability to immediately come back saying that the question was not answered; and
- some virtual only meetings have limited ability to ask questions.

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?

ASA expects the conduct of AGMs to continue to evolve, especially in relation to hybrid meetings with technology providing one element of improvement (universal ease of joining the meeting, decrease in delay for video delivery, ongoing cost reductions as audio visual devices improve, potential viewing of shareholder questions submitted online). We underscore the importance of the chairing of the meeting, and the Chair's capacity to engage shareholders and have them felt heard, as providing another element.

Our members suggest the ability for directors to see the members online would improve interaction and manage the formality better to be more personal, if possible. Another member states "I think the technology being used has been hobbled together and there is room for significant improvement to make its use a more comfortable and inclusive experience for shareholders."

Abandoning the agenda reduces discussion

In relation to the importance of the chairing of the meetings, in our observation, there is a growing trend of abandoning structured agendas during meetings. Instead, all resolutions are open for comment and questions simultaneously, often leading to sound-bite answers to a series of unrelated questions. It is claimed that addressing questions from three different sources (in person, in writing, and online) slows down the meeting progress. While it's still early days, there is significant potential for platform providers to enhance their platform offerings in a way that makes taking questions from different sources more seamless.

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?

Many shareholders vote against allowing wholly online meetings

ASA and many shareholders do not support the use wholly online meetings by companies and registered schemes outside those necessitated by significant events which prevent gathering, such as the pandemic. 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 to both the company end and in the homes of shareholders across Australia.

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

Shareholder resistance to virtual-only meetings is evidenced by the failure of resolutions to amend constitutions to allow them, such as with NIB and Vicinity Centres in 2021 and Data3 in 2022.

The limited number of companies with the capacity to hold a virtual-only meeting in their constitution do not indicate broad-based shareholder support. Some had the capacity included in their constitution prior to Corporations Act amendments which removed the need for a physical meeting (Reece 2016, MyState 2014, Xero 2007). Others, including Wisetech, Pexa and Flight Centre, put a vote to the shareholders and with the benefit of one or more major shareholder, obviously more comfortable with this format, achieved a “for” vote on the resolution of around 80%, which is above the required 75% to enact the change. Had the vote been confined to the smaller shareholders, the resolution would not have been carried.

Some companies value the physical engagement with their shareholders

In relation to whether companies hold an objective with respect to moving to virtual only meetings, we note that in ASA’s representatives’ discussion with directors prior to their AGM, a number of directors have indicated that they value the physical engagement with their shareholders at the AGM, and they feel the connection to the shareholder is lacking in a virtual only meeting.

As mentioned earlier, some companies listened to their shareholders and withdrew particular resolutions that had proposed allowing wholly online meetings.

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?

When asked, 38% of our members said that they had experienced no issues in attending a meeting with an online component. Of the remainder, our members report minor connectivity internet speed issues, clashes with anti-virus software leading inability of firewall to connect, tech glitches, loss of audio and video. One respondent had a problem with the first online meeting where he could not ask question. He reported the company “was very embarrassed and responded by, after the meeting, putting my questions and answers online.” 50% of those who encountered problems approached the company for a solution, and 38% accessed the helpline listed in the notice of meeting, whilst 12% approached the company’s share registry (who are typically involved in the personalisation and distribution of materials for meetings, etc). Some respondents noted they did not receive a posted notice of meeting which is why they approached the company for a solution. Of those seeking a remedy, 50% felt their issue was not resolved, 33% felt their issue was fully resolved, and 27% considered their issue partially resolved.

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?

ASA considers the time elapsed is too short to judge the quality of governance between companies that have listed after the 2022 amendments commencing 1 April 2022, and those that listed prior to the amendments. Small companies are often a high investment risk after listing and may experience budgetary and / or governance issues as they strive to reach maturity. Of the five companies listed since 2022, whose shares have been suspended, Catalano Seafood (administrators appointed), Leo Lithium and Omnia Metals Group held physical only AGMs. My Rewards International and Nightingale Intelligent Systems, Inc held virtual only meetings.

ASA typically attends the AGMs of the larger listed companies with many shareholders, and since the amendments there have been a small number of larger companies listed such as The Lottery Corporation which held a hybrid meeting in 2022 and a physical-only shareholder meeting in 2023.

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

ASA members report being more confident about voting outcomes when a poll is taken.

In contrast we received a complaint from one of our members who reported that Macquarie Technology at its 30 November 2023 AGM chose to pass two of the four resolutions by show of hands because the outcomes were mathematically certain based on the proxies held by the Chair and the votes cast by the members in the room. The meeting was held in a physical location with access to a webcast available on request. The voting on Resolutions one and four, being the remuneration report and the increase to the non-executive fee cap, was assessed by poll. A comparison of the proxy numbers with the poll numbers confirm the Chair was correct about the voting outcome on the director elections, but that does not change our member feeling a poll would have been more appropriate.

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

ASA has not made use of this capacity which requires at least five per cent of the votes to make the request.

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

We are not aware of any market that has an easily applied solution. Australia is a market with a high number and a high proportion of individual shareholders on public company share registers, whereas for many international markets such as the UK and the US, shares and securities are more often held indirectly via a platform, custodian or nominee.

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

This question is outside ASA's consultation contribution.

Consultation questions on the 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?

ASA members have commented that electronic documents are not sent out early enough, and some don't trust email (message going to Junk, etc). There appears to be a digital divide, where a number of our members prefer electronic communication. Others are wary of scams and phishing attacks and are wary of emails with hyperlinks, so are not willing to engage when they receive such communications electronically.

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?

ASA has received a number of complaints since 2022, about shareholders not receiving their AGM documents by post, whether they have a standing election or have made an ad-hoc request.

Need for a notice of meeting to be posted with a proxy form

The posting of the proxy form without the formal Notice of Meeting is problematic, with those shareholders who are not digitally active finding it difficult to follow up with the company to obtain the explanatory information on what it is they are voting on.

"I cannot attend the meetings but have requested proxy form by mail. Only the Commonwealth Bank (after a reminder call) sent a document with the details of Company Directors - others it was a one-page document with no details - just indicate your vote. I solved this by giving my proxy to the ASA."

42% of our member survey respondents do not feel confident to be able to receive and review company documents in a timely fashion. The complainants have noted the impact of Australia Post's longer delivery periods which lead to a compressed period to follow-up non-delivery. Comments include:

- I sometimes have to chase share registries to obtain hard copies;
- companies haven't adjusted mailing date for printed material to be posted; and
- sometimes we don't receive communications in the mail even when requested.

Not being able to rely on postal documentation is a significant issue in relation to scheme meetings, where the date of the meeting will be held when the documents are ready, unlike an AGM which is typically at a similar time each year. We recently received a query about why CSR was delisted, and then a complaint that the shareholder/member had not received the documents for the CSR or Altium scheme meetings by post.

Of the 58% survey respondents who are confident that they will receive documents in a timely fashion, they consider "in some ways the process is more direct and streamlined - so it is easier to respond." Accordingly, evidence from our members suggests that there appears to be a clear divide between those who prefer and perhaps need posted documents in order to engage, and those that are comfortable and engaged users of digital / electronic communications and meeting materials.

Some of our members are managing the desire for posted communications by refusing to share an email address with their registries as it seems they lose their standing preference when an email is made available.

Summary

AGMs of publicly listed companies should be held as hybrid meetings, being a combination of physical and virtual, with or without an option to voice a question remotely. They should be designed to foster engagement with retail shareholders, the providers of substantial capital who typically have less opportunities to engage than institutional investors, and thus rely heavily on the AGM to do so.

Electronic communications should remain the default with an "opt in" for mailed communications. But share registries and companies should ensure that shareholders who rely on posted communication aren't systemically disadvantaged and disenfranchised. We suggest a periodic review of their individual practices for delivering on requests to receive documents by post. There is currently insufficient time between the issuing of a notice of meeting and the proxy close date for shareholders to chase up their documents because their election has been lost or changed without their express wish, especially where they are not comfortable operating digitally.

If you have any questions about these comments, please do not hesitate to contact me, or Fiona Balzer, Policy & Advocacy Manager on [REDACTED].

Yours sincerely

[REDACTED]

Rachel Waterhouse
Chief Executive Officer
Australian Shareholders' Association

Australian Shareholders' Association (ASA) is an independent not-for-profit organisation funded by and operating in the interests of its members. It represents primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees, and investors, promoting good public policy and safeguarding their interests and financial wellbeing.