



OWNERSHIP MATTERS

Suite 4, Level 5, 167 Queen St, Melbourne VIC 3000 T +61 3 9602 4548 www.ownershipmatters.com.au

18 July 2024

Market Conduct & Digital Division

The Treasury

Parkes ACT

Email: meetingsanddocumentsreview@treasury.gov.au

Statutory review of meetings & documents amendments

Dear Manager,

Thank you for the opportunity to make a submission on the Statutory Review of the Meetings & Documents Amendments. Ownership Matters (OM) is an Australian owned governance advisory firm, founded in 2011, that serves institutional investors although this submission represents the views of OM and not those of its clients.

In relation to the questions raised by the Review's consultation paper, OM wishes to make the following comments:

- **Question 4:** From an investor point of view the objective of listed companies and registered schemes for member meetings should be to use the methods that facilitate the greatest level of high-quality participation. In OM's view this is best done through the hosting of hybrid meetings, allowing attendance both in person and online, rather than wholly virtual or wholly physical member meetings. Virtual meetings alone do not offer investors the same capacity to meet, interact with and challenge management as do in-person meetings; similarly, meetings held entirely in-person do not permit attendance by members unable to travel to the physical location where the meeting is being held.
- The current requirement under the *Corporations Act* requiring an entity's constitution to specifically permit virtual meetings is positive as it allows the format of meetings to be determined by members. For listed entities a positive change to the *Act* would be to require any such constitutional provision allowing the holding of virtual meetings to be approved by members at the first meeting following the entity's initial public offering. This would avoid members being effectively bound by the decisions of pre-listing members (or in reality, management and their legal advisors at the time of listing given in many cases the legal listed entity and its constitution is created and approved immediately and prior to listing).
- The low numbers of IPOs since the changes to the *Act* in 2022 make it difficult to assess whether newly listed company constitutions permitting the holding of virtual-only member meetings is common although anecdotal evidence suggests this is the case. The constitutions of The Lottery Corporation (listed in 2022) and seemingly Cettire (listed late in 2020) explicitly allow virtual-only meetings (the Cettire constitution is difficult to locate but since listing it has only held virtual meetings); the constitution of the recently listed Guzman y Gomez permits the holding of virtual-only meetings but only "in the event of extraordinary circumstances as determined by the directors".

- **Question 7:** The changes to the *Act* requiring resolutions set out in the notice of meeting for a listed company or scheme to be decided on a poll have been positive as they have increased investor confidence that the outcome of a resolution will reflect the votes cast by all members, and not simply those represented at the meeting. There have been past isolated cases, even at relatively large ASX-listed entities, of resolutions being declared passed on a show of hands that would have been defeated – or nearly so – based on the proxy votes disclosed to the market. Requiring effectively all resolutions at listed entities to be decided on a poll not only ensures the will of members is more likely to be reflected in results but also reflects the effective practice of many large entities listed on ASX prior to the changes to the *Act*.
- **Question 8:** OM is aware of at least one case where investors have flagged their intention to seek an independent report on a poll to determine if the results of a change of control resolution reflected actual votes cast (the outcome of the transaction rendered the need for a report moot). The inclusion of this power for members in the *Act*, including that any such report be made publicly available, was and is supported by OM as enabling investors to have greater confidence in the outcome of resolutions that are highly contested, especially resolutions approving material changes to the interests of members such as asset disposals, placements, related party transactions and schemes of arrangement. The ability to request an independent report went some way to addressing the 'honour system' that prevails in listed corporate elections where management are both the subjects of resolutions but also the effective overseers of the voting on these resolutions.
- To ensure investor confidence in the independent report provisions, OM would like to reiterate its view, given in its 2021 submission on proposed amendments, that the share registry be excluded from the parties able to prepare such independent reports. This is because a registry conducting such a report into an election it had conducted would be reporting on its own work.

In prior submissions relating to changes to the *Corporations Act*, including the meetings & documents amendments, OM noted pieces of 'low hanging fruit' in relation to reforming general meeting processes. The Parliamentary Joint Committee on Corporations and Financial Services' Report: *Better shareholders – Better company - Shareholder engagement and participation in Australia, June 2008* contains a number of worthwhile recommendations 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. OM would like to again reiterate, in the context of this review of the impact of legislative changes on the operation of member meetings, the need for the Parliament to ensure that the infrastructure is in place to ensure investor votes are properly counted. There is widespread industry support for reforms to the "proxy vote" process and counting system.

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,



Dean Paatsch & Martin Lawrence

Ownership Matters Pty Ltd