



19 July 2024

Dr Robert Austin AM
Chair, Independent panel for the Statutory Review of the Meetings and Documents Amendments
By email: meetingsanddocumentsreview@treasury.gov.au

Dear Dr Austin,

Statutory Review of the Meetings and Documents Amendments

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include Australian and international asset owners and institutional investors with more than \$1.9 trillion in funds under management.

Through our research, engagement, advocacy and voting recommendations, ACSI supports members in their investment stewardship efforts, which enhance the long-term value of the retirement savings entrusted to them to manage.

ACSI's position

ACSI welcomes the opportunity to respond to the '[Statutory Review of the Meetings and Documents Amendments' Consultation Paper](#) (the Consultation Paper). We are pleased to note the review's recognition of the importance of shareholder participation, transparency and good corporate governance.

ACSI's submission to the Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 raised concerns about the potential for a movement towards wholly virtual meetings to disrupt good governance. Annual General Meetings (AGMs) are a key accountability and transparency mechanism for shareholders, and this review into practice is timely. ACSI's submission focuses on shareholder participation in meetings, and our response is predominantly relevant to Question 2. Our expertise is focused on listed companies, and our comments apply in respect of listed companies. We recognise that some smaller unlisted entities, particularly those in the not-for-profit sector, find wholly-virtual meetings useful. Our view is that appropriate policy settings for these small, not-for-profit sector entities can be addressed separately through relevant regulation.

AGMs are one of the key mechanisms for supporting accountability and transparency. Shareholders provide capital to companies and should be able to exercise the associated rights and responsibilities. The AGM is therefore not a distraction to the company's activity, or an unnecessary expense, rather it is a key governance mechanism.

Virtual, hybrid and in-person only meetings

The Government's response to provide for wholly-virtual AGMs during the COVID-19 pandemic reflected the extraordinary circumstances of the time. However, the need for wholly-virtual meetings has subsided. The Consultation Paper notes that the most common form of ASX50 AGM is now a hybrid meeting. ACSI's view is that, where undertaken appropriately, this format offers the widest range of shareholders the opportunity to participate in an AGM and therefore should be the expectation. This is particularly important for larger listed entities with more diversified investor bases.

AGMs offer an opportunity for shareholders to exercise their fundamental right to engage with the company's representatives and are central to a well-functioning market. ACSI's experience is that wholly-virtual meetings are not always run effectively and in accordance with the principles of good governance. In some cases, meeting practice, while within the requirements of the legislation, can be poor. For example, with some

wholly-virtual meetings, we have observed the following:

- company directors being unavailable for questions during meetings;
- audio-only format being used, which does not allow shareholders to observe company representatives address the meeting and answer questions, or to see the reaction;
- meetings that focus solely on the chair of the board with minimal or no opportunity for shareholders to interact with other directors;
- companies requiring questions and comments to be submitted in writing ahead of the meeting rather than in real-time;
- discussion time being limited; and
- questions and/or follow up comments and questions being ignored.

The AGM provides the only opportunity for many shareholders to meet and ask questions of their representatives, the company's directors. In addition, AGMs offer the only opportunity for shareholders to engage with, and ask questions of, the company's auditor, which allows shareholders to monitor aspects of the company's behaviour and approach.

Poor behaviour related to wholly-virtual meetings (as outlined above) can have a sobering effect on accountability and transparency, because it diminishes shareholders' opportunity to participate and interact with board members. Therefore, ACSI does not support wholly-virtual meetings, and our approach is generally to recommend against company constitutional amendments that provide for wholly-virtual meetings. We consider this appropriate on the basis that ASIC is able to provide relief should there be exceptional circumstances such as faced throughout the COVID-19 pandemic¹.

ACSI also supports hybrid meetings as a minimum expectation for large, listed companies. In-person only meetings have the effect of disenfranchising some investors, and the practice of not offering a webcast and remote participation raises concerns about corporate transparency.

Constitutional amendments for wholly virtual meetings

Since 2020, we have seen a number of listed entities seek shareholder approval to amend their constitutions to allow for wholly-virtual meetings. The concerns with wholly-virtual meetings outlined above have resulted in a lack of investor support for such amendments.

In particular, investors have consistently opposed proposals to permanently enshrine wholly-virtual AGMs within listed entity constitutions. Set out below are withdrawn, amended or defeated resolutions, drawn from ACSI records.

Action type	Company
ASX300 companies that withdrew resolutions 2020-2023	<ul style="list-style-type: none"> - Newcrest Mining (2020) - Brambles (2021) - Dexus (2021) - St Barbara (2021) - Omni Bridgeway (2021) - Bravura Solutions (2022) - Core Lithium (2022) - Lake Resources (2022) - National Storage REIT (2022) - PWR Holdings (2022) - Sayona Mining (2023)
ASX300 companies that amended or removed wholly virtual component of constitutional amendments 2020-2023	<ul style="list-style-type: none"> - Qantas (2021) - IPH (2021) - Bendigo & Adelaide Bank (2021) - REA Group (2021) - Nanosonics (2021) - ARB Corporation (2022) - Aussie Broadband (2022) - Mesoblast (2022) - Telix Pharmaceuticals (2022)

¹ For example, under section 253TA of the Corporations Act.

ASX300 constitutional amendments voted down 2020- 2023	<ul style="list-style-type: none"> - Shopping Centres of Australia {now Region Group} (2020) - Ansell (2020) - Bapcor (2021) - Vicinity Centres (2021) - Altium (2021) - NIB Holdings (2021) - Redbubble (2021) - Estia Health (2021) - CSR (2021) - Deep Yellow (2022) - Perenti Global (2022) - Data3 (2022) - Betmakers Technology (2022) - Nickel Industries (2022) - Kogan.com (2022) - Boss Energy (2023) - Terracom (2023) - Polynovo (2023)
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Despite this clear investor concern, some proposals have passed, and there remains the option for entities to include the relevant provision in their constitution upon initial public offering. Therefore, there remains the possibility of a significant derogation of shareholder rights over a period of time. Accordingly, ACSI remains of the view that the ability to hold a wholly-virtual shareholder meeting (even with authority to do so in the company's constitution) should be removed. In the alternative, and at a minimum, the requirement for constitutional change, with the accompanying voting thresholds, should be retained.

Voting on a poll

Voting on a poll is an international market standard. In fact, many international investors are surprised that until recently Australian AGMs involved such reliance on voting by hand. ACSI therefore welcomed the legislative change² to require voting on a poll and supports the increasing use of voting by poll as a positive move towards better shareholder representation.

However, a range of problems remain in the proxy voting system, such as incorrect exclusions and instructions not being passed through the voting chain. In addition, company disclosure of voting results for non-binding shareholder resolutions and their contingent resolutions remains poor. These are long standing issues and will require a whole-of-system approach to address them. The Origin Energy vote is a recent example, where between the postponed meetings all proxies that had been cast were invalidated and had to be resubmitted. As long ago as 2012, research identified these problems, and a number of the issues remain, and continue to disenfranchise shareholders. ACSI would welcome a wider review of the proxy voting and vote disclosure process and whether it is fit for purpose.

In conclusion, the AGM plays an important role in corporate transparency and accountability and should uphold shareholder rights, principles of good corporate governance and be pragmatic for companies. Our comments have been made according to those principles and I trust that they are of assistance. Please contact me or Kate Griffiths (kgriffiths@acsi.org.au) should you require any further information.

Yours sincerely



Louise Davidson
 Chief Executive Officer
 Australian Council of Superannuation Investors

² Corporations Act 2001 (Cth) section 250JA.