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Senate Standing Committees on Economics
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CORPORATIONS AMENDMENT (MEETINGS AND DOCUMENTS) BILL 2021

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission in relation to the revised exposure draft of the *Corporations Amendment (Meetings and Documents) Bill 2021* ('the Bill').

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include 34 Australian and international asset owners and institutional investors with over \$1trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership to strengthen investment outcomes. Active ownership allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage. ACSI members can achieve financial outcomes for their beneficiaries through genuine and permanent improvements to the environment, social and governance (ESG) practices of the companies in which they invest.

ACSI's position on the Bill

Company meetings, including the Annual General Meeting (AGM), are a key accountability and transparency mechanism, and shareholders' ability to genuinely participate in them is centrally important. We welcome a number of elements of the Bill that address concerns that we had with previous proposals. We continue to support the following provisions that will contribute to greater transparency and accessibility of company meetings:

- Permission for companies to hold hybrid meetings on a permanent basis.
- Provisions to ensure that shareholders as a whole have a reasonable opportunity to participate.
- Poll voting for listed companies.
- The opportunity for shareholders with 5 per cent of votes to request an observer and an independent report on a poll.
- Electronic signing, execution and communication of documents.

However, there is opportunity to further improve the Bill to address emerging market issues. During the current AGM season, we have observed that a number of proposals to change company constitutions to allow for virtual-only company meetings have been withdrawn or failed to pass, reflecting shareholders' concern that virtual-only meetings could become the norm on an ongoing basis for listed companies.

ACSI and many others in the market have recognised the need for virtual company meetings during the pandemic, however there are concerns with a permanent move to virtual-only meetings. The past months have shown that virtual-only meetings do not generally provide the same opportunity for genuine interaction and engagement between shareholders and company representatives as hybrid meetings do.

Investor preference for hybrid meetings

We consider hybrid meetings to be the most appropriate model to ensure that company meetings remain an effective mechanism for transparency and accountability, while providing broader accessibility for those unable to attend the meeting in person.

Even with safeguards built into the legislation to ensure that shareholders have a 'reasonable opportunity to participate', the recent proposals by companies to change their constitutions (as outlined above) show that investors maintain concerns that virtual-only meetings are less transparent and inferior to hybrid meetings.

Proposals for company constitutional change are increasingly resisted

A number of ASX300 companies are currently proposing, or have proposed, constitutional changes to enshrine virtual-only company meetings. The proposed changes have been met with significant opposition from investors.

In 2020, several companies including Newcrest Mining and Ansell Limited proposed constitutional changes to allow for virtual-only meetings. Concern from investors led to withdrawal of the proposal, or, in some cases, the resolution failing to receive sufficient support to proceed. Recently, Brambles and Dexus withdrew proposals to change their constitutions to allow for virtual only meetings. Likewise, Qantas, Bendigo and Adelaide Bank, and Nanosonics amended their proposed changes to remove the 'virtual only' component, after engagement with investors. Others (such as Bapcor) that proceeded to a vote have seen the proposal fail to pass.

These outcomes at major companies demonstrate widespread investor concern around virtual-only meetings becoming permanent.

We have the following concerns about the proposed legislation:

- **Retrospective approval for 'virtual only' meetings:** While investors are not likely to support constitutional amendments moving forward, concerns remain about companies that have already amended their constitutions in 2020. Many shareholders supported these amendments at the time on the basis that they would prevent the relevant company from inadvertently contravening its constitution or the law during the pandemic, but that virtual-only meetings would not become ongoing standard practice. Many companies provided public assurances to this effect at the time, however, where those constitutions now expressly allow virtual-only meetings, there is a risk that these companies could seek to rely on such provisions to hold virtual-only meetings indefinitely.
- **IPOs present an issue:** While shareholders have an opportunity to vote on a proposed change for existing companies, this is not the case for Initial Public Offerings (IPOs). Ahead of listing, companies can include provisions allowing for permanent virtual-only meetings in their constitution without any shareholder vote. This could create uneven standards across the market, whereby some companies have a lower level of accountability and face less shareholder scrutiny than others. It could also mean that investors will be faced with a trade-off between a potentially good investment opportunity and the downside of reduced engagement and transparency. Such a trade-off is unnecessary, and it reduces the overall integrity of the Australian listed market.
- **Constitutional change is unnecessary with new ASIC powers:** It is important to note that there is no longer any need for listed companies to change their constitutions to allow for virtual-only meetings as a response to extraordinary circumstances like the pandemic. With ASIC's newly established power to grant temporary relief when necessary, the risk of well-meaning companies inadvertently breaching their constitutions in situations such as a pandemic appears minimal.

Solution: a simple carve-out for listed companies

We recognise that virtual-only meetings may be appropriate for many entities that are regulated by the Corporations Act, such as smaller and private entities. In contrast, there is a heightened need for the shareholders of a listed company to access information, provide their views to the company, and engage with directors. This merits a differentiated approach for publicly listed companies, as compared with the many other types of organisations to which the Corporations Act applies.

The most efficient solution would be specific provision in the legislation that applies only to listed companies and removes the option for virtual-only meetings. The legislation should allow listed companies to hold hybrid or physical meetings only.

While there is simplicity in standardising the rules across all organisations, this should not come at the expense of achieving the most appropriate legal framework for separate segments of the market which have different structures and shareholder profiles. There are many areas of the Corporations Act where different rules apply to listed companies compared with other entities. Indeed, the proposed Bill has taken this approach in relation to voting by poll, by including a provision that applies only to listed companies.

A carve-out would establish consistency across all listed companies, instead of a patchwork whereby some companies change (or have already changed) their constitutions and others do not.

I trust our comments are of assistance. Please contact me or Kate Griffiths, ACSI's Executive Manager – Public Policy and Advocacy, should you require any further information.

Yours faithfully



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