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**ASA SUBMISSION – MAKING PERMANENT REFORMS IN RESPECT OF VIRTUAL MEETINGS AND ELECTRONIC DOCUMENT EXECUTION**

Dear Madam/Sir

Outlined below is the Australian Shareholders' Association's (ASA's) comments on the Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 (the Bill).

**Summary of ASA's views**

1. Electronic communications should be default with an "opt in" for mailed communications
2. AGM's should be hybrid, not exclusively virtual

**ASA – the voice of retail shareholders**

ASA represents its members to promote and safeguard the interests of retail investors in the Australian equity capital markets. ASA is an independent not-for-profit organisation funded by, and operating in, the interests of its members, primarily individual and retail investors, and self-managed superannuation fund (SMSF) trustees.

ASA also represents those investors and shareholders who are not members, but follow ASA through various means, as our relevance extends to the broader investor community.

In a normal year, ASA physically attends in excess of 200 AGMs around Australia. We are active participants engaging with both boards and shareholders. ASA has attended in excess of 160 virtual AGMs during 2020, with more than 100 AGMs scheduled for attendance during November and December 2020.

With this experience under our collective belt, we predominantly comment on communication with shareholders, and the best form of AGM to protect retail shareholders while increasing their participation.

## **Electronic Signatures**

We take no issue with the rules regarding electronic signatures, providing record keeping is adequate.

## **Electronic Shareholder Communications**

In relation to the provision of shareholder communications electronically, we consider forcing shareholders who are not comfortable managing their investments fully online onto electronic communications will exclude effective participation in the market by different cohorts.

In order to have fairness, we must consider those who will be excluded. There are still many shareholders who either do not have access to the internet or do not wish to read and receive all their investment advice electronically. This is particularly true of older Australians.

As long as a person is legally able to purchase a share in a company, they become a part owner of that company. As a part owner of that company they are legally entitled to receive information about that company and to vote at its AGM.

It is argued that a change to exclusive digital dispatch communication only affects the old and the infirm, this is not correct; but even if it was, they still have rights, and they are still shareholders whose rights should be protected.

Instead of applying a hard edge solution, immediately forcing all shareholders into the one narrow box, digital communication or nothing, we consider natural justice should prevail, to allow fairness to all shareholders. Over time the digital-only solution will probably come into place as more retail shareholders accept this medium.

What should be mandated now is to provide all shareholders with an **opt in** system.

A shareholder must opt in for the type of company communication that they want to receive in print format. We expect that there will be only a small number that will choose the paper version.

Over a relatively short time with the continued advancements in technology improving the presentation of digital annual reports and ease of accessing them we will move to a fully digital world without denying choice in the meanwhile.

It should be noted that currently all the major share registries offer a form of opt in for all company communication, being an opt in to receive a printed annual report and opt in to receive other communications electronically (notices of meeting, dividend statements, other). We also note that with some registries the opt in process can be difficult to use and confusing. Moving to a mandatory opt in system to receive printed communications will not add extra procedures or costs.

This alternative approach should reduce posted notices to shareholders who do not wish to receive them but have not opted in to electronic communication. Instead of the current situation where it is said that Telstra printed and posted 650,000 hard copy notices of its 2019 AGM, an opt in system will, we expect, immediately reduce that number, thereby keeping shareholders happy while reducing current costs.

An example of disenfranchisement by removing mailed shareholder communications, among the 50 or so calls that ASA received on this matter, is one from an ASA member who has been a shareholder with Westpac for 30 years and a customer for 50 years, who phoned us to complain about Westpac not sending notices of meeting to shareholders by post for the 2020 AGM. As a 75-year-old living in rural Queensland (80km away from town), he doesn't have access to the internet nor is it easy for him to go to a library where such access is available.

### **Virtual AGMs versus Hybrid AGMs**

#### **Timing considerations relating to ASA's experience of effectiveness or otherwise of virtual AGMs**

In relation to ASA's experience of virtual meetings, we note that the real test of the temporary allowance of virtual AGMs is the period from mid-October to end November. Therefore it is unfortunate that this proposal is not being examined after this period.

#### **Quality issues relating to shareholder satisfaction**

We have experienced meetings of varying quality. While many companies have tackled the production of a virtual AGM with enthusiasm and goodwill, the atmosphere, and feeling of being heard by directors and management, is missing. Control over the questions remains with the company, with the potential to exclude questions and shareholders not being aware of any areas of contention or doubt. The effectiveness of questioning someone face-to-face and being able to follow up by asking for further explanation when the answer is not complete cannot be underestimated. With all the goodwill in the world a virtual AGM is, by comparison, often a flat lifeless affair.

#### **Susceptibility to governance failure**

We note the proposal to extend the relief for shareholders and members of a registered scheme such that meetings may be held using electronic means provided that all persons have a reasonable opportunity to participate. A move to online meetings will enable companies to avoid questions they wish to ignore. In ASA's 60-year experience of attending AGMs, retail shareholder disquiet often precedes full-blown governance failures by a number of years. Virtual-only AGMs could allow that disquiet to be suppressed.

#### **Benefits of Hybrid AGMs**

The only fair way to provide all shareholders and directors the opportunity for real participation is through a Hybrid AGM. ASA has been a pioneer in using this technology with our first Hybrid AGM held in 2017 with the physical meeting held in Brisbane, followed by Hybrid AGMs with physical meetings in Sydney in 2018, in Melbourne in 2019. This year, because of the COVID-19 lockdowns, we held a virtual AGM.

#### **Ability to facilitate informal meetings person-to-person by Retail Shareholders.**

The Hybrid AGM starts off with the physical presence of the shareholders and their representatives, the board of directors in one room together. Please do not dismiss the benefits that are gained by shareholders, directors and company executives having the opportunity to

informally meet, discuss and exchange views both before and after the formal proceedings. All involved in this informal interaction have to admit that, over the years, they have at times had their views shifted by these discussions. and therefore consider them beneficial.

Then to the stage of the AGM itself, where directors, who are paid by the shareholders to represent them, have their once-a-year opportunity to physically face shareholders, explain what they have been doing in the last year and what they are planning for the future.

When the chair, the managing director and others are making these explanations, it is not to a flat screen or a camera, but to real people, which creates a dynamism which is often reflected in the increased excitement in the presenter's voice and manner. Then the shareholders, the owners, have the opportunity sometimes to praise the directors, but usually to ask those questions that they may have waited a year to ask. If they do not think the response fully answers their query, they can ask a follow-up question or the same question in a different manner.

Both the shareholder and the questioner can feel the sense of agreement or disagreement with either the question or the answer. Empowered by seeing one shareholder asking a question encourages another ask something that the first question or response stirred in them. This is therefore a meeting where actual dialogue and exchange of ideas occur.

### **Expanded horizons of Hybrid AGMs**

The giant bonus which is represented by the Hybrid AGM, is the opportunity it offers all shareholders, no matter where in the world they are located, to observe the proceedings, to hear the questions asked by other shareholders who attend the physical meeting and ask questions in real time. Access is similarly open to all the other stakeholders who are interested to observe what is discussed.

It can be correctly argued that this latter benefit is also present in the virtual meeting, however without the physical interaction of the meeting place this often just becomes a soulless interaction.

### **Facilitating future Virtual/Hybrid AGM system improvements**

If for some reason the decision was not to move forward with mandating the hybrid AGM concept, we believe the term "virtual meeting technology" needs to be defined in terms of requirements capability, including but not limited to:

- 1) Viewing the board member participants — can the participants be
  - a) seen live (audio and video);
  - b) seen as a pre-recorded video (audio and video);
  - c) listened to as a pre-recorded audio (audio only); or
  - d) listened to as live audio (audio only)?

The ability to ask follow-up questions or make comments in response to matters discussed at the meeting, and to make decisions as to voting on resolutions after hearing the discussion (including the reading of questions typed into the online meeting platform) at the meeting.

## **Suggested improvements to virtual AGM system design**

ASA shared the expectations of virtual AGMs during COVID-19 with a number of companies prior to the main 2020 AGM season commencing in October. These expectations include:

- We expect the chair and CEO addresses to be live, and for directors to speak to their election.
- We expect questions to be answered by the most appropriate respondent e.g. remuneration questions by the chair of Remuneration Committee, as this contributes to the atmosphere of real engagement.
- We expect shareholders and proxyholders to be able to ask questions in real time.
- Engagement with written questions is greater when a person (such as company secretary or investor relations manager) reads out the questions and attributes them to the shareholder or proxyholder who asked it.
- Attendees should be advised of the time lag inherent in online meetings and also any character limitations of the text questions, as they will inhibit the timely asking of questions.
- We expect questions to follow the agenda and the proxy votes to be advised before the end of questions on the relevant resolution.

## **Current shortcomings of existing Virtual AGM system**

We have feedback that context is often lost in shortening the questions — that would be reduced if the person reading the questions has a better idea of where stakeholders are coming from — such as someone who already engages with shareholder communications. Such knowledge will also allow choosing questions from diverse viewpoints to allow more participants to feel heard.

We prefer the ability for oral questions but note companies that have offered live oral questions may have been disappointed in the take-up. We suspect the time lag inherent in presentations plus need for participants to "warm up" is responsible.

For ASA's past hybrid annual meetings, we asked three members to commit to asking an unscripted question (text questions delivered by Lumi). In our experience by the time the second or third question is asked, there is a flow of online questions. Most companies request shareholders submit questions prior to the meeting, for those that have endured stilted virtual AGMs they should consider reserving one or two to start the proceedings in order to build interaction.

## **Post Virtual AGM records**

We would like the questions to be published to the ASX announcements platform within 24 hours of the end of the company meeting. In a physical meeting participants are aware of unanswered questions, and whether there were unasked questions e.g. queue at microphone or when microphone is turned off, or answers which missed the point of the question. This publishing of the questions would highlight whether any had been avoided.

In summary, we would like to see a meeting that feels like a hybrid AGM despite the absence of a physical meeting. We understand that this takes planning as well as intent.

We have also issued the following guide in recognition that the abrupt change to virtual meetings was likely to disrupt the usual participation of retail shareholders at AGMs.

### **Guide to shareholders attending online AGMs during COVID-19**

## **Additional points**

We also consider the five-year review period (item 1.72) is too long, when it is considered the speed at which these proposals are being rolled out, with November 2020 the real test of the virtual AGM, and evaluation of this test likely to take place early in 2021.

The explanatory memorandum points to the cost of shareholders attending the meeting as a negative (2.9) as well as the small proportion of attendance as calculated by the number of shares held by those attending. The AGM is very much a retail shareholder event with institutional investors tending to have alternative opportunities to voice their concerns to companies, and to make assessments of directors in their role.

Retail shareholders attendance of AGMs increases where there has been a governance failure, as evidenced with the banks after the Financial Services Royal Commission, or where the company has been a rewarding investment.

AGM attendance will increase when it is known companies will use the platform of the AGM to interactively engage shareholders in what their company has been doing in the past, introduce the key players making changes and enthusiastically outline the future possibilities. Removing the physical shareholder meeting will remove that option.

We are supportive of shareholder votes being counted on a poll (2.18) so as to reflect one share having one vote.

## **Conclusion**

Thank you for the opportunity to present the ASA's position on these important issues and for the extension of time to do so.

If you have any questions about this submission, please do not hesitate to contact me, or Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely

A handwritten signature in black ink that reads "John Cowling". The signature is written in a cursive style with a distinct loop at the end of the last name.

John Cowling  
Chief Executive Officer  
Australian Shareholders' Association