

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](mailto: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 investments<sup>1</sup> in aggregate, and the tens or hundreds of thousands of shareholders for our largest companies<sup>2</sup>, 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 companies<sup>3</sup>.

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<sup>1</sup> [Australian Investor Study 2023](#)

<sup>2</sup> Commonwealth Bank reports 869,355 shareholders in its 2023 Annual Report.

<sup>3</sup> 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?**

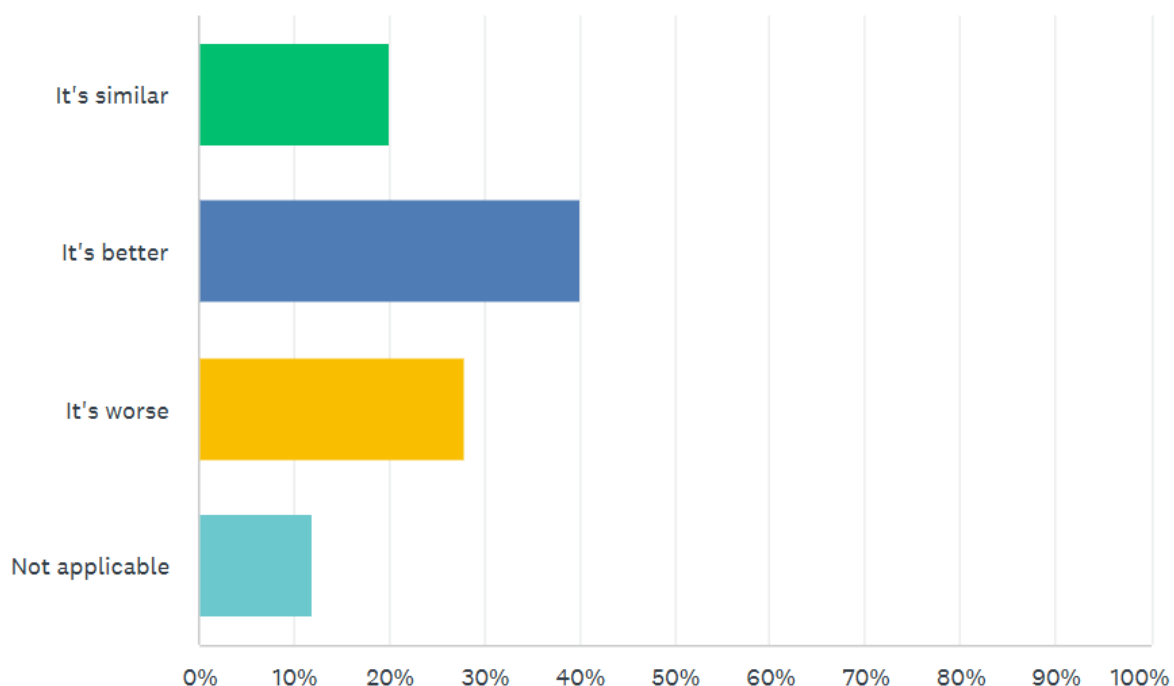
##### **- What have been the effects of the amendments on the costs of holding AGMs or other meetings?**

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 (02) 9252 4244.

Yours sincerely

A solid black rectangular box used to redact the signature of Rachel Waterhouse.

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.*

16 July 2021

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**ASA SUBMISSION - TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL 2021: USING TECHNOLOGY TO HOLD MEETINGS AND SIGN AND SEND DOCUMENTS**

Dear Madam/Sir

Thank you for the opportunity to comment on the Treasury Laws Amendment (Measures for Consultation) Bill 2021: Using technology to hold meetings and sign and send documents (Bill).

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

Our comments below relate to exchange-listed companies and their engagement with their shareholders, and particularly apply to companies with many shareholders and the matters covered in this Bill.

While we understand the desire to have limited number of exceptions to any of the rules covered in this Bill the sheer number of shareholders of many listed entities and the range of financial literacy amongst these shareholders support a differential for listed companies. Our comments do not apply to what is expected from other types of entities such as not-for-profits and private companies.

ASA is generally supportive of the intent for the Bill to facilitate technology neutral delivery of shareholder communications and, to a limited degree, shareholder meetings.

We do not support shareholder meetings of listed companies being held as virtual-only meetings outside of pandemic and other extreme circumstances. 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 both at the company end and in the homes of shareholders across Australia.

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

For those listed companies finding managing hybrid investor meetings more difficult than either a physical-only or virtual-only, we recommend engaging with companies that successfully deliver hybrid meetings to large shareholder numbers. Innovation such introduction of a moderator to facilitate questions from within a physical location and online should be considered.

ASA believes companies should seek explicit shareholder approval to hold virtual member meetings in a standalone resolution rather than an omnibus update to the company constitution after this Bill has passed. This is a respectful way for companies to engage with their shareholders.

We would expect the shareholders' decision to support the resolution will be highly correlated to the trust they have in the company now and in the future. We also consider allowing previous constitutional changes to stand will reduce shareholder trust and if permitted mean that future resolutions will be more likely to be voted against "just in case" subsequent changes make them less palatable.

We support all the characteristics outlined in 249S ***Reasonable opportunity to participate***, but note s249S(1) "A company that holds a meeting of its members must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting" is a matter that can only be judged by the members. We will rely on periodical reviews by ourselves and other investors and communications similar to [ASIC's guidelines for investor meetings using virtual technology](#) to establish if that opportunity has been provided.

With respect to Subsection 250J(1) substituting (1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded: ASA has long argued determining the outcome of voting on a resolution should be carried out by a poll for companies included in the S&P/ASX200 Index. We believe this should be extended to companies included in the S&P/ASX300 Index given their size and number of shareholders.

ASA supports the introduction of s253V and Company members' rights to request observer on poll and s253V A Company members' rights to request report on poll, as a measure to build trust in the integrity of meeting procedures.

In relation to electronic communication of documents and recording and keeping of minute books, ASA's position remains electronic communications should be default with an "opt in" for mailed communications. We support the absence of stipulation as to delivery technology to enable development and evolution of better ways of providing such communication. We also support the ongoing opportunity for shareholders to provide a standing order to receive their communications by mail to overcome difficulties they may experience receiving electronic communications reliably whether due to individual set up or due to location.

We understand the application and transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (Measures for Consultation) Act 2021, mean once the Bill is passed, the amendments will not apply where an investor meeting is held before 16 September 2021, or if the Notice of Meeting has been announced to the exchange.

We are concerned that the date of the passing of the Bill will cause timing issues for the requirement to notify shareholders of the opportunity to opt into receiving company communication by post. Many listed companies will be issuing their notice of annual general meeting in September and October, which will provide an opportunity to advise shareholders the process for opting in. Companies should be aware this may be frustrating for shareholders who have proactively provided existing instructions to post all or certain communications.

Given the range of technological glitches experienced by shareholders (from hardware and software failures to lock out from email address) we believe there should be the opportunity for shareholders to make an ad hoc request for any documents to be posted.

ASA strongly support the review of the of the operation of this Act no later than the earliest practicable day after the end of 2 years after this section commences.

If you have any questions about these comments or other matters, 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



13 September 2021

Market Conduct Division  
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Submitted: Online via [businesscomms@treasury.gov.au](mailto:businesscomms@treasury.gov.au)

**ASA SUBMISSION – TREASURY – USING TECHNOLOGY TO HOLD MEETINGS AND SIGN AND SEND DOCUMENTS – AUGUST 2021**

Dear Madam/Sir

Thank you for the opportunity to comment on the exposure draft legislation to support companies and their officers to use technology to satisfy Corporations Act 2001 requirements.

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA has previously submitted comment on virtual meetings and electronic communication of documents in relation to publicly listed companies. In brief these comments can be summarised as follows:

1. AGMs should be held as hybrid meetings, a combination of physical and virtual, not exclusively virtual
2. Electronic communications should be default with an "opt in" for mailed communications
3. Electronic execution of company documents is welcomed.

In relation to the current consultation, we make the comments below, also confined to publicly listed companies:

**Schedule 1 — Facilitating the use of technology for meetings**

We strongly support the proposal to have standing election for company communications to be received by physical or electronic delivery by type of communication until the standing election is revoked. The option to make a one-off request for electronic or physical delivery of a communication, where the need arises, is also strongly supported, as is the roll-over of existing elections. We support the requirement to post documents within 3 days of an ad hoc request.

We agree the condition that a document can only be given electronically if it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference at the time that the document is given, is necessary for the documents to function as intended.

In relation to the requirement for any communication by electronic means to include advice of how to arrange to receive a hard copy form of the communication, we consider a requirement for the advice to be included on the investor section of the website and advised periodically would be sufficient. We suggest the inclusion of the advice in an annual communication such as notice of annual meeting would provide a reminder that contacting the registry will secure a hard copy document for shareholders in any publicly listed company.

We see there may be a difficulty with the timing and method of notifying of the opportunity to request physical delivery of notices of annual general meeting given the imminence of the AGM season for companies with a balance date of 30 June 2021. We ask companies to advance mail a simple opt-in request form, even though it is not legally necessary.

In relation to companies being able to, if permitted by a company's constitution, to hold a wholly virtual meeting, ASA believes companies should separate the resolution to update the constitution to allow virtual meetings from any catch-all resolution updating the constitution. This is a respectful way to seek shareholder agreement to permit wholly virtual company meetings.

We agree the amendments must allow members to exercise any pre-existing right that they may have to ask questions or make comments (such as under sections 250S and 250T) both verbally and in writing. For example, the company could satisfy this requirement by offering members both the opportunity to ask questions orally by dialling into a phone hook-up and the opportunity to type their questions into a chat function.

With respect to s250J, ASA believes publicly listed companies should hold a poll on all resolutions set out in the notice of a meeting of members of a listed company or listed registered scheme must be decided on by poll. A show of hands indicates the voting intentions of those present, but it does not usually reflect shareholder intent indicated by proxy votes or what would be achieved by a poll.

## **Schedule 2 — Other amendments relating to meetings and documents**

We support the proposal that a member or group of members of a company or registered scheme with at least 5% of the voting power can request to have an independent person appointed to observe and/or prepare a report on a poll conducted at a members' meeting.

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

Yours sincerely



Rachel Waterhouse  
Chief Executive Officer  
Australian Shareholders' Association



Australian  
Shareholders'  
Association



8 November 2021

Senate Economics Legislation Committee  
Parliament House  
Canberra ACT 2600

Submitted: [Online](#)

**INQUIRY INTO CORPORATIONS AMENDMENT (MEETINGS AND DOCUMENTS)  
BILL 2021 [PROVISIONS]**

Dear Mr Fitt (Mark)

Thank you for the opportunity to make a submission to the Inquiry into Corporations Amendment (Meetings and Documents) Bill 2021 Provisions.

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA has previously submitted comment on virtual meetings and electronic communication of documents in relation to publicly listed companies. In brief, these comments can be summarised as follows:

1. AGMs should be held as hybrid meetings, a combination of physical and virtual, not exclusively virtual.
2. Electronic communications should be the default with an "opt in" for mailed communications.
3. Electronic execution of company documents is welcomed.

In relation to the current inquiry, we make the comments below, also confined to publicly listed companies:

ASA is unable to support the holding of listed public company shareholder meetings in a virtual-only format.

The current technology and practice doesn't allow the majority of shareholders a reasonable and reliable opportunity to participate in meetings. There are glitches in the software, delays in the delivery to the shareholder such that questions typed into the online platform are received by the company after the questions on a topic are closed. We also receive complaints relating to the shareholder's unreliable internet stability, whether chronic, intermittent or temporary in nature, preventing full participation in a virtual-AGM.

We have observed a greater number of shareholders joining the meetings as guests rather than as shareholders at virtual meetings. We have been notified of this being a reaction to experience of difficulties in logging in. This also prevents full participation in the virtual AGM, as guests are unable to vote or ask questions at the meeting.

Digital natives are given privileged access to ask questions of company directors through their tech knowledge and capacity, crowding out shareholders who have less experience.



The addition of sub-section 249R (c) allowing a company to hold a meeting of its members “using virtual meeting technology only, if this is required or permitted by the company’s constitution expressly” has thrown a number of companies proposals to change their constitution in this way into disarray.

Qantas, Brambles, Dexus and Bendigo & Adelaide Bank were amongst the companies that withdrew the resolution to allow virtual-only meetings before AGMs took place. The wording of the Brambles’ 8 October 2021 ASX announcement [“Withdrawal of AGM resolution”](#) summarises the situation well:


“Included in the proposed amendments was a provision to enable Brambles to hold shareholder meetings using virtual technology to the extent permitted by law. As some reservations have been expressed about companies holding virtual meetings, and the proposed amendments are not considered material, Brambles has decided to withdraw item 8.”

There are two elements to the reservation expressed about companies holding virtual-only meetings; technology and trust.

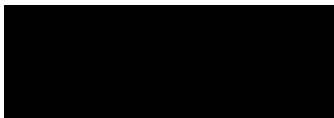
We are also concerned that the inclusion of sub-section 249R (c) will see all newly listed companies including use of virtual meeting technology only on listing.

We consider holding company meetings using the hybrid model (face-to-face and virtual) will facilitate the development of the technology, and that at some point in the future it will be much closer to the physical meeting experience.

ASA advocates for hybrid (physical and virtual) when ever it is safe to do so (e.g., outside pandemics) and for retail shareholders to have the option to receive hard copy company communications. We will continue to recommend retail shareholders vote against virtual only meeting constitutional change.

If you have any questions about these comments, please do not hesitate to contact 

Yours sincerely



Rachel Waterhouse  
Chief Executive Officer  
Australian Shareholders’ Association