

30 October 2020

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Dear Sir,

Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 (Bill)

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 governance and risk management professionals from the listed, unlisted and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Preliminary comments - bringing the Corporations Act into the 21st century and member engagement

The key reason the measures in the Bill are needed is that the out-dated, paper-based state of the Corporations Act mean parts of the Act are no longer fit for purpose in a constantly evolving digital world. These measures will assist in bringing the Corporations Act into the 21st century. To avoid the situation where the Act is out of date within a short space of time, our members consider it is critical that it be 'technology neutral'. There are likely to be technological solutions not yet in existence which may again change the way companies interact with their members as radically as technology has changed these interactions in 2020. The proposals in the Bill also go some way to addressing some of our members' long-standing concerns; the environmental impact of the use of paper involved in printing notices of meeting and other materials (and associated delivery mechanisms) where alternative means of effective communication are available which enable the provision of relevant information in real time. These concerns extend to the wastage of paper where documents are either not received by the member, or are discarded unread as well as the significant printing and distribution costs. This waste includes the requirement for continued mailing to 'lost' shareholders six years after mail is initially returned.

Our members support all forms of positive member engagement. For this reason, they support finding the most effective ways for companies which wish to continue with or explore virtual meetings do so in a way that at least matches and does not diminish the opportunities for

member engagement, traditional at physical meetings. As is the case with anything new or introduced at short notice, some 2020 AGM experiences may have been reported as having sub optimal or other unintended consequences. However, our members are committed to working collaboratively with all stakeholders to in the first instance, minimise these concerns and then to provide ideas and solutions which enhance the virtual meeting experience for all parties.

Our members also acknowledge that virtual meetings will not be the preferred option for many companies such as smaller listed companies or unlisted companies. For this reason, the format of a members' meeting should not be prescribed, it should be open to companies to adopt the format most suited to them and their members. Our members support the facilitative approach taken in the Bill. Our members also caution against 'hard wiring' provisions into the Corporations Act to address issues that were more the product of the unprecedented conditions under which AGMs have taken place in 2020.

Like many others, companies have found the move to virtual meetings has provided increased opportunities for member participation in meetings. This is because they are able to include members located in other parts of the country or overseas who are no longer restricted to only attending meetings held in their home state or country. A recent report indicates ... 'When comparing attendance from 2019 to 2020, overall attendance has increased by 36%, suggesting that digital technology does not inhibit shareholder attendance or engagement'.¹ Governance Institute is keen to support the dialogue around how to make virtual meetings as effective as possible for those companies which choose to continue with them.

The measures in the Bill recognise and respond to the 'step change' brought about by the Coronavirus. They also address longstanding issues that impact on the ability of companies to operate effectively and efficiently having regard to the wide use of technology across the business and private sectors.

Governance Institute congratulates the Australian Government on taking the initiative to make a number of sensible and pragmatic, but temporary changes to the Corporations Act introduced in the Treasurer's Determinations (Determinations) permanent, and for taking this valuable reform opportunity to ensure Australia's corporate regulatory infrastructure is certain, coherent and fit-for-purpose.

Governance Institute:

1. **recommends that** it is critical that the Corporations Act be 'technology neutral' given that there are likely to be technological solutions not yet in existence which may again change the way companies interact with their members as radically as technology has changed these interactions in 2020.
2. **recommends that** companies have the flexibility to conduct members' meetings in the manner most appropriate to their and their members' circumstances, without prescribing the format of members' meetings.
3. **recommends against** amending the Corporations Act to require that all votes at virtual meetings be taken on a poll. Listed companies are required to report on an 'if not, why not' basis against the *Corporate Governance Principles and Recommendations* (Principles and Recommendations) as to whether all substantive resolutions at members' meetings are decided on a poll. Our members consider that there are too many issues with requiring all voting at virtual meetings to be taken on a poll rather than a show of hands, even for smaller companies and that this proposal would in fact disadvantage smaller companies.

¹ See [Virtual AGM Report Insights from online meetings in April and May 2020](#), Computershare, at page 4. This report indicates that there was a marked increase in the number of 'guests' at these meetings, 'passive shareholders' who registered as guests.

4. **strongly encourages** Government to embrace the opportunity to amend the Corporations Act to enable companies to use technology to notify members that notices of meeting and materials are available.
5. **recommends** a regime whereby members can opt in to receive either an electronic or hard copy notice of meeting. In addition, the legislation should deem companies' members who fail to make an election to have received the materials, provided the company makes the meeting materials: available in the public domain and accessible, using a universal or near-universal channel of communication, and issuing an ASX announcement (if listed), noting that making the meeting materials available on the company's website meets the current definition of a near-universal channel of communication.
6. **recommends strongly against** the proposed amendment to section 251A (1) to record questions and comments in the minutes of members' meetings. Our members do not support imposing more stringent requirements for minutes of virtual meetings than for minutes of physical meetings, which meet long-established principles set by the courts.

We provide more detail on the following pages.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Megan Motto', with a stylized, cursive script.

Megan Motto
CEO

Attachment

Detailed explanation of new law

Execution of company documents

Our members welcome amendments to the Corporations Act to make execution of company documents technology neutral and allow companies to execute company documents electronically. They also support the ability to execute counterparts of documents (Explanatory Memorandum (EM) paragraph 1.11) and consider the three pre-conditions set out in paragraphs 1.13 – 1.15 of the EM represent appropriate safeguards.

We would be grateful for clarification in relation to the proposed amendment to section 127(2A) of the Corporations Act referred to in paragraph 1.16 of the EM as it is not clear how one would 'observe' a seal being affixed.

Virtual meetings

Types of meeting that may be held virtually

The proposals outlined in paragraphs 1.18 and 1.20 of the EM will give all companies to which the Corporations Act applies the flexibility to hold meetings in the way that best suits them and their members. Our members would be concerned to ensure that the repeal of section 249S and the new sections do not mean that a webcast of a physical meeting without voting or questions electronically is considered a 'hybrid' meeting.

From our members' perspective it is key not only to meet their obligation under the Corporations Act to ensure members have a reasonable opportunity to participate in a meeting, but also to ensure that companies have the ability to adopt a means of holding a meeting that best suits their and their members' circumstances.

The Corporations Act applies to a very broad range of entities – from the very largest listed companies to very small companies such as small not-for-profit companies limited by guarantee. For a company limited by guarantee with 100 members, where for instance 25 members typically attend an annual general meeting (AGM) each year, a physical meeting may still be the preferred option once restrictions ease. While the cost of virtual meetings is likely to decrease in the future as technology evolves, many smaller companies such as small listed companies and small unlisted companies find current virtual meeting technology too expensive and free solutions do not currently offer the features required.² However, for a large listed company with mostly domestic and international institutional members who vote by proxy, a virtual AGM may be more appropriate and provide an opportunity for broader engagement. Our members also report that many larger listed companies are finding less formal, but more informative ways to engage with their retail shareholders outside the traditional AGM at more frequent intervals during the year.

Prior to this year when virtual meetings became the only viable option, because of doubts about the ability to hold a fully virtual meeting under the Corporations Act, hybrid meetings were mooted as a means of using technology to increase member engagement and participation at AGMs in the face of dropping attendance numbers at AGMs year on year.³ However, the take up of hybrid meetings has not been as great as originally anticipated – see the Regulation

² The free version of Zoom, a popular platform, limits the length of a meeting to 40 minutes.

³ See *Reinvigorating the AGM: Is hybrid the answer?* Tammy Lim, *Governance Directions*, Volume 69, Number 11, December 2017.

Impact Statement at paragraph 2.31. This year due to restrictions on the size of gatherings and travel, virtual meetings became the only option, particularly once the Determination resolved concerns around the legality of virtual meetings. Companies, share registries and technology providers have all worked collaboratively to improve and refine members' experience as the AGM season has progressed to afford them a reasonable opportunity to participate in AGMs.

Our members report based on their recent experience either a virtual meeting or a physical meeting is their preferred means of holding an AGM. While organising a virtual meeting for the first time was not without challenges, there were some unexpected benefits such as the increased numbers attending virtual meetings.⁴ An online format also works well for smaller companies who were able to engage with members who would not normally travel to an AGM but were able to log on and participate in the meeting. The virtual format also has greater appeal for the next generation of members who are by and large digital natives. Virtual meetings are permitted in New Zealand and this format has been successful.

Our members consider that as a practical matter, a hybrid meeting format involves increased logistical complexity as physical and online attendees need to be provided with an equal ability to participate, ask questions and vote during the meeting, and the logistics essentially involve hosting two formats (physical and virtual) with the associated costs of both formats (venue hire, catering and online platform costs). It may be difficult for members to follow proceedings and participate in the meeting as well as harder to manage answering questions and deal with repetitive questions.

A hybrid meeting also doubles the risk profile of an AGM. For example, the multiple technologies required to successfully present the live AGM and stream the virtual AGM simultaneously:

- increase the risk of technology failure
- increase the complexity in taking questions both from the floor and the virtual platform
- increase the difficulty in presenting live questions on the virtual platform, and
- reduce the quality of the virtual event if it is broadcast from a reception room rather than from a studio or office.

In addition, managing the effectiveness of the hybrid process requires more than twice the number of experienced personnel and co-ordinators (internal and external), resources that the largest companies can generally buy in. On the other hand smaller and mid-size companies can find it harder to stretch existing internal resources or compete for external resources when peak demand is usually concentrated into one or two one month periods of AGM seasons.⁵

Our members therefore support the facilitative approach outlined in the EM which enables those companies that want members to be able to attend meetings virtually to be able to do so without concerns about the validity of the meeting and the resolutions passed. They would be concerned about any move to impose a particular format for meetings on companies.

Governance Institute recommends that companies have the flexibility to conduct members' meetings in the manner most appropriate to their and their members' circumstances, without prescribing the format of members' meetings.

Place and time of meeting

Despite the temporary amendments many aspects of how technology can be used under the Act remained unclear and we have received a number of questions from members during the

⁴ See footnote 1 above.

⁵ Some of our members report smaller companies have had to convene AGMs at inconvenient times because the time was the only time the technology provider had available.

year. For this reason, Governance Institute obtained advice from counsel which is included in our [Statement on electronic storage and execution of documents and electronic meetings](#) (Statement). It is pleasing to note that the Bill addresses a number of the issues addressed in the Statement.

One issue that has been the subject of debate amongst Governance Institute members this year is the location of a meeting held electronically – EM paragraph 1.22. Determining the answer to this question was one of the reasons Governance Institute obtained the legal advice attached to the Statement.⁶

Governance Institute members support the proposals regarding the place and time of meetings set out in paragraphs 1.23 – 1.24 of the EM.

Conduct of virtual meetings

Our members support the proposed modification to section 249S of the Corporations Act in relation to the quorum for virtual meetings outlined in paragraph 1.27 of the EM.

The Principles and Recommendations which apply to all listed companies recommend that substantive resolutions at meetings are decided by poll.⁷ The qualification ‘substantive’ was included to ensure that procedural motions were not captured by the Recommendation. Listed companies are required to report against the Principles and Recommendations on an ‘if not, why not’ basis.

Our members consider there are a number of issues with requiring all voting at virtual meetings to be taken on a poll rather than a show of hands, particularly for smaller not-for-profit companies limited by guarantee with few resources – paragraph 1.28 of the EM. For some of these companies polls can present considerable challenges and our members report that for some votes a show of hands is preferable. For example, some smaller companies have used the ‘hand up’ function in Zoom or similar technology for votes on a show of hands.

Some of the issues for smaller companies are set out below:

- The technologies used can vary widely. Some companies can afford sophisticated technology such as Lumi, Microsoft Teams or a paid subscription to Zoom which all allow voting. Other companies may use telephone connections or a chat group such as WhatsApp which enables all members to see each other and participate in a meeting but do not make it easy to conduct an instant poll. Multiple technologies can also be involved. Some members may attend via Zoom, but if not all members have computer access there needs to be allowance for telephone connections.
- The provisions of a company’s constitution need to be considered. For example, some constitutions allow for the first vote where electronic attendance is involved to be taken ‘on the voices’ as equivalent to a show of hands and then by any means determined by the chair for a poll. This allows most procedural motions to be dealt with by determining whether the motion is carried by the ‘ayes’ or the ‘nos’. Under the proposals this would technically not appear to be possible unless it were a replaceable rule in the Corporations Act.
- The excessive use of polls may mean that members disengage from the meeting, so that polls would be honoured in the breach for all but substantive matters. For example,

⁶ See [Statement on electronic storage and execution of documents and electronic meetings](#) pages 4 and 19.

⁷ [Corporate Governance Principles and Recommendations](#), 4th edition, 2019, ASX Corporate Governance Council, Recommendation 6.4 at page 24.

a vote of thanks to the board would almost certainly be carried on the voices, as would a procedural motion that the speaker no longer be heard. Is this type of situation what the legislation is intended to capture? A further potential reason for disengaging with the meeting is 'Zoom fatigue' with which many have become familiar during the Coronavirus pandemic. This may mean members leave the meeting before substantive issues are dealt with. In smaller companies this has the potential to lead to a loss of a quorum, subject to the wording of the constitution.

- There is a further issue as to what constitutes a poll. At common law a poll has a very broad definition.⁸ For example, a poll could be conducted by the chair simply working their way down the list of attendees publicly and marking a member's voting preference or abstention on the list. We suspect this is not what was contemplated when drafting the proposed amendments. It should also be noted that some not-for-profit constitutions do not refer to polls but to 'secret votes' which adds a further layer of complexity.⁹
- Our members also question whether if the proposal is adopted that a broader definition of 'poll' may be required. Would a vote using the Zoom 'hand up' facility that is simply counted by an administrator be a 'vote in writing'? Similarly, is a Lumi-type computerised counting of numbers of buttons pushed a 'vote in writing' or does there need to be a specific definition of a poll for a virtual meeting to incorporate the concept of being 'in writing'?

Our members consider there are significant difficulties in requiring all votes at virtual meetings of companies to be taken on a poll, particularly for smaller companies. We would also point out that where a company uses a technology platform for its general meetings there is a cost to the company for each poll. For this reason, where possible many small listed companies try to limit the number of polls.

Governance Institute recommends against amending the Corporations Act to require that all votes at virtual meetings be taken on a poll. Listed companies are required to report on an 'if not, why not' basis against the Principles and Recommendations as to whether all substantive resolutions at members' meetings were decided on a poll. Our members consider that there are too many issues with requiring all voting at a virtual meeting to be taken on a poll rather than a show of hands, even for smaller companies and that this proposal would in fact disadvantage smaller companies.

Electronic communication of documents relating to meetings

As a preliminary comment we note that conditions during the Coronavirus pandemic have illustrated clearly that the Australian corporate environment is fast paced and dynamic. The pace of change has increased exponentially, and companies need to be able to communicate with their members in real time.

The current Corporations Act provisions relating to sending documents and other material to members by post are a stark contrast to the continuous disclosure regime for listed companies. Under that regime companies communicate important, price sensitive information to members by an announcement through the ASX Markets Announcement Platform (MAP).

⁸ See *Horsley's Meetings Procedure Law and Practice*, 7th Edition, A D Lang at paragraph 14.6.

⁹ There is an issue for companies which have adopted the Australian Charities and Not-for-profits Commission's template constitution for a company limited by guarantee. This template uses the term 'vote in writing' rather than 'poll'. While a 'vote in writing' is a common law element of a 'poll' there are other elements of a poll – like proxy voting, where permitted, and proportional voting and it can occur at a later time and not at the meeting.

For some years Governance Institute has recommended not only amending the Corporations Act to enable companies to send notices of meeting to members, but also to remove the current requirements to send hard copy notices of meeting to members who have **not** nominated an electronic address for communication. We have advocated enabling companies to distribute meeting notices and materials to their members using a universal or near-universal channel of communication which would be deemed to satisfy the notice requirements under the Act. As noted in the EM the cost of sending notices of meeting and materials, particularly to members who have not opted in to receive them electronically is considerable.¹⁰ Our members' concerns extend to the wastage of paper where documents are either not received by the member, or are discarded unread as well as the significant printing and distribution costs. This waste includes the requirement for continued mailing to 'lost' shareholders six years after mail is initially returned.

Members already access annual reports digitally. In 2007, the Corporations Act was amended to enable members who do not elect to receive a hard copy of the annual report to access it on a website. More than 90 per cent of members no longer receive a hard copy annual report in the mail. This has led to major cost savings and a reduction in paper waste. We encourage Government to embrace the current opportunity to amend the Corporations Act to enable companies to use technology to notify members that notices of meeting are available on MAP, if listed, or on the company website.

Types of documents that may be given or signed electronically

Governance Institute members support the proposals in paragraphs 1.31 to 1.40 of the EM. They represent a sensible harmonisation of various provisions of the Corporations Act relating to notices under the Act.

How to give a document using electronic means

We note that paragraph 1.41 of the EM uses email as an example of the electronic means by which it is possible to provide a document. Our members consider that the technology should not be limited to any one form of electronic communication. Increasingly for example, individuals receive notifications by text message. Many government departments, financial services and utility providers communicate with their clients and customers by text message and it may, sooner rather than later, become the way members want to receive notices of meeting and other communications. Text messages could include a link to a page on the company website where the information is available. This would also assist in dealing with situations where an email address is out of date. We understand that share registries are currently able to capture this information and it may become members' preferred method of communication. The legislation should be technology neutral because there are likely to be methods of electronic communication, not currently available, that will become commonplace within a relatively short space of time.

When a document may be given electronically

For some years Governance Institute has advocated addressing what is in practice a significant issue for many companies, the requirement to continue to send hard copy notices of meeting and materials to members where they have not nominated an electronic address, including the requirement to continue mailing to 'lost' shareholders six years after mail is initially returned.¹¹

¹⁰ See Governance Institute's submission [Technological solutions enabling Australian businesses to survive and operate during the COVID-19 crisis period and beyond](#) dated 1 June 2020 to the Senate Select Committee on Financial Technology and Regulatory Technology.

¹¹ Op cit. Many companies report having tried to re-engage with members for a number of years in a variety of ways. See the Woodside Case Study at page 7 of the Governance Institute

Governance Institute has previously advocated in favour of a regime whereby members could opt in to receive either an electronic notice of meeting or a hard copy of a notice of meeting.¹² Our proposal was that companies' members who failed to make an election be deemed to receive them if the company makes them universally available on their website. However, based on their experience this year our members consider that Government should embrace the opportunity to amend the Corporations Act to enable companies to use technology to notify members that notices of meeting and material are available. This is because:

- under the Determination companies were not required to send hard copy notices of meeting. This has worked well, notwithstanding the requirement to provide a letter or postcard notifying members that the notice of meeting was available
- the increased use of electronic communication has resulted in more efficient participation and members having faster access to information. By contrast there has been an increase in the delays in delivering mail which has increased the time it takes for a notice of meeting to reach a member and for them to return a proxy or voting form. Australia Post's delivery times have lengthened recently and have certainly increased materially since the Corporations Act was enacted in 2001
- relying on hard copy notices of meeting does not address the environmental impact of printing of notices of meeting and materials where documents are either not received by the member or are discarded unread. This is even without taking into account the wastage involved in continue mailing to 'lost' shareholders six years after mail is initially returned, and
- continuing to allow for opting in to receive hard copies of notices of meeting and materials would eliminate the efficiency benefits otherwise achieved by cutting out printing and mailing timeframes.

Our members would also welcome clarification of the definition of 'electronic address'. The Bill provides for a 'nominated electronic address' and while the Bill imports some definitions and concepts from the Electronic Transactions Act 1999, (ETA), neither the ETA nor the Bill contain a definition of 'electronic address'.

Our members consider that the Corporations Act should be amended to enable a company to satisfy the requirement to provide a notice of meeting by ensuring the meeting notices and materials are available to its members: using a universal or near-universal channel of communication. Under this proposal a company would be required to ensure the meeting materials are: available in the public domain and accessible, using a universal or near-universal channel of communication. The legislation should deem these members to have received the materials, subject to the company making the meeting materials: available in the public domain and accessible, using a universal or near-universal channel of communication, and issuing an ASX announcement, if listed, noting that making the meeting materials available on the company's website meets the current definition of a near-universal channel of communication. This would also enable companies to deal with the situation where a company does not have an address, let alone an electronic address, for a member. The time for the giving of a notice of meeting should run from the date of release to ASX, if listed, or the date of posting on the company website.

Australasian Investor Relations Association [Bringing shareholder communications into the 21st century](#). Companies report that during the Coronavirus pandemic many 'lost' members have contacted them to provide updated contact details.

¹² See the submissions referred to in footnotes 10 and 11 above.

Alternatively, as we have previously advocated our members **recommend** a regime whereby members can opt in to receive either an electronic or hard copy notice of meeting. In addition, the legislation should deem companies' members who fail to make an election to have received the materials, provided the company makes the meeting materials: available in the public domain and accessible, using a universal or near-universal channel of communication, and issuing an ASX announcement (if listed), noting that making the meeting materials available on the company's website meets the current definition of a near-universal channel of communication.

Given our comments above, our members consider that companies should be able to satisfy the requirement for a document to be 'readily accessible' under paragraph 1.43 of the EM by making it publicly available either on a platform such as MAP, if listed and/or by making it publicly available on its website.

The Bill still does not satisfactorily address the issue of members who have not provided a 'nominated electronic address'. Our members consider that the solution outlined in paragraph 1.47 in the situation where a member has not nominated an electronic address still imposes a regulatory burden on companies. This is because they would be required to determine an electronic address they believe on 'reasonable grounds' to be the member's recent electronic address which is then deemed to be a 'nominated electronic address'.

Governance Institute strongly encourages Government to embrace the opportunity to amend the Corporations Act to enable companies to use technology to notify members that notices of meeting and material are available.

Governance Institute recommends a regime whereby members can opt in to receive either an electronic or hard copy notice of meeting. The legislation should deem companies' members who fail to make an election to have received the materials, subject to the company making the meeting materials: available in the public domain and accessible, using a universal or near-universal channel of communication, and issuing an ASX announcement, if listed, noting that making the meeting materials available on the company's website meets the current definition of a near-universal channel of.¹³

Place of receipt and despatch

Our members have no comments on the proposals in relation to the new default rules for determining when electronic communications are sent and received or on the default place of receipt and despatch. They also support the ability to vary the default rules by agreement and Treasury's decision not to adopt the more nuanced approach referred to in paragraph 1.54 of the EM.

Signing a document using electronic communication

Our members support the proposals set out in paragraphs 158 – 162 of the EM.

Minute books

Questions and comments must be recorded

Our members support the policy intent behind paragraph 1.67 of the EM (new section 251A (1) (a) (aa)), namely that members' meetings conducted using virtual technology are conducted in a meaningful and effective way that provides a reasonable opportunity for members to participate. However, our members have significant concerns with the proposed amendment which they consider to be at odds with the current law and practice in relation to minutes of members'

¹³ See Footnotes 10 and 11 above.

meetings. In particular, our members are concerned that minutes of a virtual meeting are treated differently to minutes of a physical meeting.

ASIC issued the [ASIC guidelines for investor meetings using virtual technology](#) (ASIC Guidelines) to assist companies meet the requirements of the temporary arrangements under the Treasurer's Determination. In the ASIC Guidelines it sets out its expectations around questions at members' meetings. It addresses raising questions that are asked 'live' during the course of the meeting, selecting questions raised in advance of a meeting for a response during the meeting and members entitled to vote at a meeting having the opportunity to consider responses to questions and the debate before voting.¹⁴ The issue of questions and comments at meetings is also covered in joint [Guidance](#) issued by Governance Institute, the Australasian Investor Relations Association and the Business Law Section of the Law Council of Australia in September 2020. This joint Guidance expands on the ASIC Guidelines and provides a number of practical suggestions for dealing with questions at members' meetings.

One point to note is that members can and do submit questions to companies at any time during the year. They are not limited to asking questions at an AGM.

We also note that there is currently commentary around companies 'filtering' and 'cherry picking' questions at AGMs. This is specifically addressed in the ASIC Guidelines at paragraph 1 (d) and in our joint guidance. We acknowledge that there may be some companies where questions may have been filtered during the current AGM season. We would point out that some of the larger companies usually receive large numbers of questions in advance of the meeting. Some companies categorise these questions and where they relate to customer issues send them to the appropriate area of the company for a response. The responses to other questions are typically included in the chair's address.

Many companies film or record AGMs and members are able to view the video or listen to an audio recording so that they can review the questions asked at the meeting and many companies maintain a record of the questions asked at AGMs – see also the ASIC Guidelines at 1(d).

The principles and practices that apply to minutes of directors' meetings largely apply to minutes of members' meetings.¹⁵ It is also important to remember that a members' meeting is a much larger, and in some cases much longer, event than a board meeting. As with board minutes, the progress of discussions, the identity of speakers from the floor and responses to individual questions are not customarily recorded in these minutes. The proposals in the Bill are at odds with these principles. Our members do not support imposing more stringent requirements for minutes of virtual meetings than for minutes of physical meetings.

Good practices around answering questions and addressing comments at virtual meetings are continuing to evolve as the year has progressed and more virtual AGMs take place. To date, the feedback we have received from members who have conducted their AGMs online has been positive. Many of them are already considering how they would modify and improve their practices were they to hold further virtual AGMs.

It is important to consider that companies which held AGMs during the 2020 'mini-AGM season' were forced to rearrange these meetings, in normal circumstances the result of months of planning, within the space of two to three weeks. It is also important to recognise that organising an AGM in a location where there were severe restrictions on movement such as Victoria, was extremely challenging. As restrictions on movement and travel ease across the country and

¹⁴ [ASIC Guidelines for investor meetings using virtual technology](#), 6 May 2020 paragraphs 1(c), (d) and (e).

¹⁵ For a discussion of the principles and law see [Joint statement on board minutes](#), August 2019 Governance Institute and Australian Institute of Company Directors.

virtual AGMs become more common our members consider practices are likely to refine and improve even further.

Our members consider it would be premature to 'hard wire' a provision requiring the recording of questions and comments at virtual meetings in the minutes.

Governance Institute strongly recommends against the proposed amendment to section 251A (1) to record questions and comments in the minutes of members' meetings. Our members do not support imposing more stringent requirements for minutes of virtual meetings than for minutes of physical meetings, which meet long-established principles set by the courts.

New rules apply as mandatory rules

We note that the amendments outlined in the Bill are facilitative and consider this approach appropriate. As noted above, for a range of reasons many companies, absent the restrictions imposed by the COVID-19 pandemic, may wish to conduct physical meetings and execute documents as currently contemplated by the Corporations Act.