

10 September 2021

Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600
Email: businesscomms@treasury.gov.au

Dear Sir/Madam

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL 2021: USE OF TECHNOLOGY FOR MEETINGS AND RELATED AMENDMENTS

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission in relation to the revised exposure draft of the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments ('the Bill')*.

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include 36 Australian and international asset owners and institutional investors. ACSI's membership spans industry funds, public sector funds, international investors and corporate funds. Our members believe that ESG risks and opportunities have a material impact on investment outcomes. As fiduciary investors, they have a responsibility to act to enhance the long-term value of the savings entrusted to them. Through research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership to strengthen investment outcomes. Active ownership allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage.

ACSI's position on the Revised Exposure Draft

The Annual General Meeting (AGM) is a key accountability and transparency mechanism, and shareholders' ability to genuinely participate in an AGM is centrally important. ACSI welcomes this revised Exposure Draft of the Bill, which addresses a number of our concerns with previous proposals.

Virtual and hybrid meetings

We support the proposal to make specific reference to hybrid meetings. Hybrid meetings are the most appropriate model to ensure that AGMs remain an effective mechanism for transparency and accountability, while providing broader accessibility to the meeting for those unable to attend the physical meeting. Allowing for hybrid meetings as ongoing practice will also reduce uncertainty, along with the practical and flexible solutions for extraordinary situations in which participants cannot attend in-person (for example, due to COVID restrictions).

We welcome the proposed addition to the draft that would see a company able to hold virtual-only meetings (outside extreme circumstances) only where 'expressly' required or permitted by its constitution (s249R).

In 2020, a total of 31 Australian ASX200 companies sought to amend their constitutions to allow for virtual-only meetings. Many shareholders supported these amendments on the basis that they would prevent the relevant entity inadvertently contravening its constitution or the law during the pandemic, but that virtual-only meetings would not become ongoing standard practice. Where those constitutions now expressly recognise virtual-only meetings, there is a risk that these companies could seek to rely on such provisions to hold virtual-only meetings indefinitely. If the Bill proceeds, investors will monitor company practice in this respect, and we recommend that Treasury's ongoing review of the legislation and use of technology also monitors practice with respect to this issue.

Reasonable opportunity to participate

We continue to support the provisions to ensure that shareholders (as a whole) have a reasonable opportunity to participate in AGMs. We support the proposal that meetings must allow members to 'exercise orally and in

writing any rights of those members to ask questions and make comments' (s249S(7)(b) and s252Q(7)(b)).

Voting technology

The provisions related to voting processes for listed companies will facilitate efficiency and accuracy in meetings. We support proposed s250JA, which ensures that substantive resolutions at AGMs of listed companies are decided by poll.

The proposed provisions allowing voting by poll reflect standard practice in the ASX300, and are broadly recognised as a principle of good governance for listed companies.¹

Likewise, ACSI supports the provisions allowing companies and registered entities to request an independent observer and independent reporting on a poll. Research has demonstrated operational weaknesses in the systems used to cast votes at company meetings, which reduces investor confidence in voting outcomes.²

Ongoing review

We also support the ongoing review that Treasury will undertake to analyse how technology is being used for meetings and ensure that the legislation is fit-for-purpose over the long-term.³

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

Yours faithfully



Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors

¹ As reflected in the ASX Corporate Governance Council, Principles and Recommendations, 4th edition, 2019, Recommendation 6.4: <https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>.

² ACSI, 'Institutional Proxy voting in Australia', October 2012: <https://acsi.org.au/research-reports/institutional-proxy-voting-in-australia/>.

³ Explanatory Memorandum for the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments*, paragraph 1.6