



OWNERSHIP MATTERS

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Market Conduct Division
The Treasury
Parkes ACT
Email: businesscomms@treasury.gov.au

Using technology to hold meetings and sign and send documents

Dear Manager,

Thank you for the opportunity to make a submission on the Exposure Draft of the Treasury Laws Amendment (Measures for a Later Sitting) Bill 2021. Ownership Matters (OM), formed in 2011, is an Australian owned governance advisory firm serving institutional investors. This submission represents the views of OM and not those of its clients.

As noted in our earlier submissions on the matters addressed by the Bill, OM does not support listed entities being able to hold virtual meetings without the ability for investors to be physically present outside of the extraordinary circumstances created by events such as the COVID-19 pandemic (OM strongly supports listed entities having the capacity to hold hybrid virtual-physical meetings). A number of the provisions of the proposed Exposure Draft however have addressed the potential for mischief in relation to virtual meetings in the case of listed entities, with their large, diverse investor bases, and these are noted below. OM also welcomes the Treasury's prudent commitment to review the operation of virtual meetings generally and specifically in relation to listed entities to ensure the ongoing ability of investors to hold board and management teams to account via general meetings is not eroded by entities shifting voluntarily to solely virtual meetings.

In relation to the updated Exposure Draft OM wishes to support several specific changes made to address areas of concern as a result of feedback received on the earlier draft. These are as follows:

- **Proposed ss.250JA & 253J(1A):** This proposed change, requiring resolutions on the notice of meeting for a listed company or listed managed investment scheme, to be decided on a poll addresses concerns raised in submissions on the initial exposure draft relating to potential risks around resolutions decided on a show of hands at virtual meetings for listed entities. OM supports this change incorporated in the revised exposure draft.
- **Proposed s.249R(c):** OM also supports the addition requiring a company's constitution to "expressly" permit the holding of virtual meetings in order for a company to be able to hold a virtual meeting. This clarifies potential uncertainty as the first exposure draft allowed a virtual-only meeting if 'required or permitted' by a company's constitution.
- **Proposed s.252P(c)(ii):** OM also supports this proposed addition to the exposure draft stipulating that a registered scheme must seek investor approval to amend its

constitution to permit virtual meetings. This removes the potential for a responsible entity to amend the constitution unilaterally to allow virtual meetings using its powers under s.601GC.

We would also like to reiterate our support for Part 2G.7 of the Bill which would give investors in listed entities the power to request independent reports on polls. The proposal will enable investors to have greater confidence in the outcome of resolutions that are highly contested and which can involve material changes to corporate structures and the interests of members such as asset disposals, placements, related party transactions and schemes of arrangement. The proposal requiring any report on a poll to be made "readily available" following its publication is also positive and a critical requirement for the independent observer provisions to be effective.

OM notes the revised draft specifically allows an independent report to be conducted by a share registry in addition to the external auditor; it would on balance be preferable to specify that the share registry of the listed entity in question is not independent for the purposes of providing an independent report on a poll. A report prepared by an external body such as the auditor would necessarily involve working with the share registry but it would be best not to have such a review overseen by the registry, the entity most involved in the poll process. In addition, a small number of listed entities have had internal share registries and to avoid the existence of any doubt it should be made explicit that an internal registry does not qualify as independent for the purposes of preparing a report on a poll.

Our earlier submissions noted a number of pieces of 'low hanging fruit' in relation to reforming general meeting processes that are worthy of consideration in addition to the ability for investors to appoint an independent observer of polls. The Parliamentary Joint Committee on Corporations and Financial Services' Report: *Better shareholders – Better company - Shareholder engagement and participation in Australia, June 2008* contains a number of worthwhile recommendations relating to the absence of a fully electronic audit trail for the lodgement of proxy votes and the examination of a revised record date for the purposes of determining voting entitlements. If the Parliament is taking the time to reform the AGM, OM considers it should also ensure that the infrastructure is in place to ensure that investor votes are properly counted. There is widespread industry support for reforms to the "proxy vote" process and counting system.

Please feel free to contact us concerning any aspect of our submission. For the avoidance of doubt we are happy for our submission to be made public.

Yours sincerely,



Dean Paatsch & Martin Lawrence

Ownership Matters Pty Ltd