



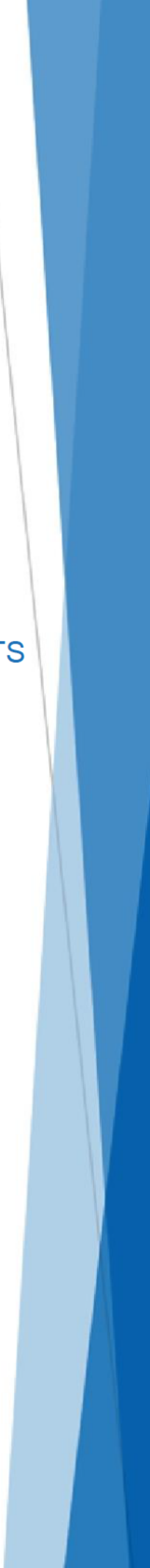
Australian Banking
Association



STATUTORY REVIEW OF THE MEETINGS AND DOCUMENTS AMENDMENTS

Australian Treasury

26 July 2024



Key recommendations

Banks continue to strongly support measures to allow companies and registered schemes to fulfil their legal obligations to hold meetings and execute documents using electronic means under the *Corporations Act 2001* (Cth).

The ABA makes the following key recommendations:

1. Given the experienced decline of in-person attendance at Annual General Meetings (**AGM**), the Statutory Review Panel consider recommending providing optionality for companies to host AGMs in either hybrid or wholly online formats.
2. Amendments be made to the requirement that shareholders must 'speak into the meeting' through the use of a telephone line so that it can be an optional participation offering provided by a company.
3. A detailed assessment of the requirements for signing and executing documents be undertaken across all Australian jurisdictions, with a view to identifying jurisdictional differences and introducing national consistency.
4. The detailed assessment be led and overseen by the Federal Government to ensure that all States and Territories work towards a common goal of alignment.

Policy lead: Ellen Choulman, Director, Policy, [REDACTED].

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

ABA submission to the Statutory Review of the Meetings and Documents Amendments

The Australian Banking Association (**ABA**) welcomes the opportunity to provide a submission to the Statutory Review of the Meetings and Documents Amendments (**Statutory Review**) led by the Statutory Review Panel (**Panel**).

We provide responses to select questions included in the discussion paper on the Statutory Review, set out below.

Consultation questions

1. How has the experience of running company for registered scheme members' meetings changed since the amendments? and
2. How have the amendments affected members' participation in meetings and has this affected the exercise of shareholder rights or corporate governance?

As the discussion paper on the Statutory Review notes, in 2020, temporary measures were introduced to allow companies and registered schemes to fulfil their legal obligations to hold meetings and execute documents under the *Corporations Act 2001* (Cth). These measures, which were supported by banks, were made permanent in 2022. The introduction of these measures enabled companies to comply with their obligations in a more flexible manner, including permitting the electronic execution of company documents, and for companies and registered schemes to hold meetings, provide notices and other documents relating to meetings and keep minutes electronically.

Prior to these measures being available, ABA members witnessed a steady decline in in-person participation at their Annual General Meetings (**AGM**) over the past decade. Since providing shareholders with the ability to attend meetings online (wholly online during the pandemic and hybrid after that period), overall participation levels have increased, although in-person participation continues to decline and attendees at AGMs continue to represent a very small percentage of total number of shareholders on the share register.

Given the experienced decline of in-person attendance at AGMs, the ABA suggests that panel consider recommending providing optionality for corporations to host AGMs in either hybrid or wholly online formats.

ABA members have observed that overall shareholder participation has increased following the commencement of the amendments by enabling shareholders to participate online, including through voting and asking questions, in a hybrid meeting. However, banks have observed that very few shareholders participate via the telephone line (for some banks, fewer than 1% of shareholders on the shareholder register participate using a phone line). The requirement to include telephone line functionality in a hybrid AGM increases complexity for hybrid meetings, particularly given the typical duration of banks' AGMs, some of which run for over four hours.

Practically, the existence of this requirement means that if a company uses virtual technology to run an AGM (which is generally considered better practice), it is required to have a phone line in place. However, if a company runs a meeting with physical, in-person attendance only, the company is not required to provide phone line functionality.

The ABA recommends the Panel amend the requirement that shareholders must 'speak into the meeting' through the use of a telephone line so that it is an optional participation offering provided by a company.

3. 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?

The ABA considers the need for wholly online meetings will depend on a range of factors, such as the shareholder make-up, including number and geographical spread of shareholders, and patterns of shareholder engagement. As noted in our response to Question 1, banks are experiencing declining physical shareholder attendance at AGMs both in terms of absolute numbers and proportionately. The ABA notes that AGMs in other countries (such as the US) often happen virtually and typically tend to have a greater level of participation by shareholders than in Australia.

We note that from the perspective of a large size company, if there was general acceptance of online rather than physical or hybrid meetings, full online facilitation would save costs, while still providing shareholders an important opportunity to participate in the meeting.

We consider that given AGMs are an important mechanism for shareholders, there should be consideration of whether the purpose of an AGM can be fulfilled in an inclusive and cost-effective way without compromising on that purpose.

4. What, if any, issues have been experienced with the electronic signing of documents? If yes, how could these be improved?

The ABA strongly welcomes the electronic signing of documents, which was an important step in realising the benefits of a digital economy and making the benefits of modern business communications consistent and sustainable.

Currently, the approach to electronic execution of deeds differs across some jurisdictions. The ABA has long called for and noted the merit in a nationally consistent approach for the electronic signing and execution of documents, making it easier for all parties to comply with their obligations and execute documents, regardless of their location or purpose. At present, execution requirements vary depending on what type of party is signing, in which circumstances, and in what jurisdiction.

We acknowledge the continued focus by regulators on digitising how industry can work and interact with ASIC. The ABA welcomes digitisation activities from ASIC, such as accepting electronic, rather than paper-based forms (including electronic signing) and accepting digital payments rather than requiring cheques. While one of the most commonly used forms is available online (Form 484 – Change to company details), there are several other forms, such as Form CL13 – Notice in relation to special purpose funding entity and Form 281 – Notice of intention to carry out a share buy-back, which still require paper lodgements with wet ink signatures, rather than being able to be lodged online. There are also forms that require accompaniment of a lodgement fee in the form of a cheque or money order, such as Forms 205 – Change of company name, 205AA – Change of type (limited by guarantee to limited by share) and 205AB – Change type (limited by shares and guarantee to limited by shared). The ABA welcomes the continuing digitisation of these forms and processes to make it easier to lodge and pay for services and to support the modernisation of business communications for companies.



The ABA strongly recommends a detailed assessment of the requirements for signing and executing documents be undertaken across all Australian jurisdictions, with a view to identifying jurisdictional differences and introducing consistency where it is feasible. In other areas, such as the implementation of eConveyancing, the ABA has observed that individual States and Territories aim to implement requirements with the spirit of national consistency but ultimately adopt bespoke State-based variances, which introduces operational complexity for industry. The ABA encourages the detailed assessment be led and overseen by the Federal Government to ensure that all States and Territories work towards a common goal of alignment.