

19 July 2024

Meetings and Documents Review
c/- Better Business Communications Unit
Market Conduct and Digital Division
Treasury
Langton Cres
Parkes ACT 2600
review@treasury.gov.au

Re: Statutory Review of the Meetings and Documents Amendments - Proxy Voting in Australia

Dear Sir/Madam,

The Australian Custodial Services Association (ACSA) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients, and the market. Members of ACSA include NAB Asset Servicing, J.P. Morgan, HSBC, State Street, BNP Paribas Securities Services, BNY Mellon, Citi, Clearstream, Bank of America, Netwealth and The Northern Trust Company.

Collectively, the members of ACSA hold securities and investments in excess of AUD \$4.5 trillion¹ in value in custody and under administration for Australian clients comprising institutional investors such as the trustees of major industry, retail and corporate superannuation fund, life insurance companies, responsible entities and trustees of wholesale and retail investment funds, and various forms of international investors into Australia.

Support for Terms of Reference and Further Change

Effective management of environmental, social and governance risks and opportunities support institutional investors' requirements to maximise returns and act in the best interest of their members or shareholders. Corporate governance forms a crucial pillar of this, enabling investors to exercise their ownership rights associated with their investments by acting in accordance with their corporate governance voting principles. Custodians support this process through the collection, dissemination and

¹ As at 31 December 2023, <https://acsa.com.au/page/IndustryStatistics>

processing of material relating to corporate meetings along with the collation and casting of votes at meetings via Proxy Voting. It is important that this process be streamlined, efficient, and low risk.

Issues With the Current Framework

The legislative framework governing Proxy Voting in Australia contains shortcomings which increase risk and complexity, and these matters have remained largely unchanged since the inception of the *Corporations Act 2001*. ACSA has previously lobbied Treasury (ACSA Letter to Treasury on Proxy Advice dated 18 June 2021 – Attachment 1) for legislative amendments and rule changes to simplify and enrich this process, and we hope that this terms of reference review will open the door for these changes to be reviewed, to the benefit of all investors in Australian securities.

The changes introduced through the *Corporations Amendment (Meetings and Documents) Act 2022* and *Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021* were positive, but do not address a number of flaws in the framework. Previous reviews such as the 2008 Parliamentary Joint Committee on Corporations and Financial Services paper title “Better shareholders – Better company Shareholder engagement and participation in Australia as well as the Corporations and Markets Advisory Committee 2012 discussion paper *The AGM and Shareholder Engagement* put forward proposals to create certainty in voting process, reduce inefficiencies and align Australia with international best practice.

Despite widespread support for reform², changes were not enacted. As companies return to a post-covid-normal governance structure, there is no better time to review the framework around meetings and Proxy Voting. In addition to providing feedback on the changes made, we would like to request the industry and government address the long-standing inefficiencies and deficiencies in the process, and to propose internationally recognised standards which should be adopted in Australia.

Impact of Virtual and Hybrid Meetings - the effects of the amendments relating to online meetings

ACSA Members have not observed any impact on the voting process or the conduct of companies following the enactment of *Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021*. With regards to meetings, the role of a custodian is primarily to support proxy voting. As a result, the move to virtual meetings has not have any impact on the standard model used to support voting at

² See https://takeovers.gov.au/sites/takeovers.gov.au/files/2021-04/agm_shareholder_engagement_submissions.pdf

meetings as physical attendance was not required. ACSA members have also not seen any significant changes to the rate of vote participation, with the percentage of shares voted growing year on year.

Support for Greater Use of Electronic Information - the effects of the amendments relating to electronic document execution and electronic giving and sending of meeting-related documents.

ACSA supports the changes introduced through the *Corporations Amendment (Meetings and Documents) Act 2022* to enable the efficient dissemination of meeting materials in an electronic form via electronic communication channels. However, there are still many inefficiencies which have not been addressed by this act with PDF documents used as standard to provide meeting information.

The end-to-end flow of information from issuer to end investor is standardised and fully electronic in many markets around the world, but this is not the case in Australia.

For over 20 years custodians have been providing meeting information to their clients in electronic form, allowing investors to track upcoming meetings and vote electronically. Custodians manually transpose data from meeting announcement PDFs into Proxy Voting platforms, allowing domestic and international investors to understand the meeting and consume the data in a standardised format. This includes meeting times and places, details of resolutions, eligible holdings, and vote deadlines. Custodians then provide votes to the share registry. For the majority of meetings in Australia this is via fax. Whilst channels do exist to support electronic voting, only one share registry currently supports this, and in any case a single standard method of voting for all proxy events is a bare minimum under international standards. The absence of this channel introduces immense risk to the proxy voting process which, in the modern ESG context, is a risk that investors are becoming less and less comfortable with.

Global standards exist for the dissemination of meeting information and Proxy voting using the ISO 20022 standard. ACSA is a strong advocate for the use of electronic information in the financial services industry and firmly believes that the use of global standards is a key driver in building out greater efficiency, creating capacity and reducing costs and risks for all investors. ACSA would like to see all Australian registries support these standards for both the dissemination of meeting information as well as the receipt of votes and the subsequent confirmation that they have been processed.

ACSA Recommendations to Reform Proxy Voting - experience in other countries of the use of technology and any lessons that could apply to Australia.

ACSA welcomes the opportunity to provide feedback to the panel on the Terms of Reference for the Statutory Review of the Meetings and Documents Amendments. In addition, ACSA has also provided a

copy of its recent White Paper - ACSA Recommendations to Reform Proxy Voting in Australia (attachment 2) which puts forward changes that will improve efficiency and promote transparency throughout the entire voting chain from issuers to end investors. ACSA is proposing a modernisation of the legislation and framework (including Corporations Act (2001 Cth)) regarding proxy voting to enable greater transparency, accountability, and efficiency. Achieving this requires 4 key changes:

Recommendation	Rational
Record Date for voting to be set at the end of a specified business day no more than 5 business days before the meeting	Create certainty that the record date and time falls on a business day when holdings are static
Voting deadline to be set after Record Date	Creates certainty on the number of shares eligible to vote for any holder in CHES
Mandatory dissemination of proxy voting materials by issuers in electronic machine-readable formats (in addition to existing channels)	Removes the risk of transpositional errors, increases the speed that information is provided to investors, forms the basis on which electronic voting can take place.
Mandatory processing and confirmation of proxy votes in electronic machine-readable formats	Removes the reliance on faxes for lodging votes, creates an audit trail of voting, provided a channel for vote status reporting, allows votes to be cast by custodians when they are received rather than on the instruction deadline.

ACSA’s recommendations are based on broad industry consensus and are aligned with international best practice, would not introduce any additional costs for issuers, and once implemented would increase efficiency, timeliness, and accuracy of proxy voting.

The changes introduced through the *Corporations Amendment (Meetings and Documents) Act 2022* and *Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021* have supported the adoption of widespread electronic distribution of meeting information. ACSA feels that whilst the changes have laid a good foundation, further changes should be enacted to bring Australia up to international best practice.

CONTACT INFORMATION

We welcome further dialogue on the modernisation of meetings for Australian companies in particular proxy voting and would be pleased to provide additional practical insight on market process inefficiency and comparisons.

If you have any questions in relation to this submission, please do not hesitate to contact myself [REDACTED] or Scott Oakland [REDACTED].

Yours sincerely

David Travers
Chief Executive Officer
Australian Custodial Services Association

About ACSA

About the Australian Custodial Services Association (ACSA)

The Australian Custodial Services Association (ACSA) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients and the market. ACSA works with peer associations, governments, regulators and other market participants on a pre-competitive basis to encourage standards, process consistency, market reform and operating efficiency. Established in 1994, ACSA members currently hold assets in excess of \$4.5 trillion in custody and under administration for Australian institutions.

The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions. Custodians provide a range of institutional services to clients including traditional custody and safekeeping, investment administration, foreign exchange, securities lending, transfer agency, tax and financial reporting, investment analytics (risk, compliance and performance reporting), investment operations middle office outsourcing and ancillary banking services.

www.acsa.com.au

Important Note

ACSA works with peer associations, regulators and other market participants on a pre-competitive basis to encourage standards, promote consistency, market reform and operating efficiency. The views expressed in this letter are prepared by ACSA and should not be regarded as the views of any particular member of ACSA. The comments in this letter do not comprise financial, legal or taxation advice.

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18 June 2021

██████████
Director
Business Conduct Unit | Market Conduct Division | Markets Group
The Treasury
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Treasury Consultation with ACSA
CONFIDENTIAL

Dear ██████████

Thank you for the opportunity to contribute to the discussion on the call of 4 June 2021.

As mentioned, we are pleased to provide the attached written response to expand on the points discussed.

Independent to the formal proxy advice consultation, ACSA believes current proxy voting procedural issues reduce certainty and merit policy review in their own right.

We welcome further dialogue or questions. In the first instance, please contact Sam Meares, Chair of the ACSA Operations Working Group on ██████████ or ██████████.

Yours sincerely

Sally Surgeon
Chair
Australian Custodial Services Association

Important Note: The views expressed in this letter are prepared by ACSA for the purposes of consultation with Treasury on proxy voting procedural issues and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA.

Treasury Consultation

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Introduction

The Australian Custodial Services Association (ACSA) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients and the market.

Collectively, the members of ACSA hold securities and investments in excess of AUD \$4 trillion in value in custody and under administration. Members of ACSA include NAB Asset Servicing, J.P. Morgan, HSBC, State Street, BNP Paribas Securities Services, Citi and Northern Trust.

Custodians provide services to financial institutions, including superannuation funds and investment managers. These institutions are in turn the guardians of a significant portion of the wealth of millions of ordinary Australians. The services provided include processing corporate action instructions, including proxy voting, on behalf of beneficial owners.

Institutions are collectively the majority owners of virtually all listed companies of material size in the Australian market. As a consequence, the majority of larger listed companies have a significant portion of their shares on issue held in the name of the custodian's nominee company.

Policy Nexus

ACSA acknowledges the Policy Advice consultation objectives, the role of proxy advisers and the high degree of institutional share ownership. In this paper, ACSA does not seek to provide a view on whether or not we support proxy advice reform or the key elements of the consultation paper.

Our feedback, however, specifically refers to current proxy voting procedural issues that reduce certainty and merit policy review both in their own right and in light of any potential changes in the broader proxy voting landscape.

ACSA makes two specific recommendations (see overleaf):

- Voting Entitlement Record Date
- Proxy Lodgment

The recommendations are based on the principle that procedural certainty is in the interests of significant majority of stakeholders, is targeted at improving the administration of voting entitlements, and aligns Australia with the majority of other markets globally.

The introduction of a regulated record date and a clear distinction between subsequent proxy submission date would allow custodians to ensure that the risk of over / under voting is effectively eliminated and therefore significantly improve the integrity of the proxy voting process. Detailed voting processes and examples describing concerns are included below.

The certainty created through regulated dates and distinction between them is particularly important when considering the scale of holdings for which custodians facilitate voting, and therefore the possibility of a voting outcome to turn on the basis of this current procedural weakness in our market.

Recommendations

Voting Entitlement Record Date

1. Insert a new Section into Chapter 2G, Part 2G.3 as follows:

"The number of votes that a member may cast at a meeting is to be determined on the business day which is at close of business [X business days] prior to the date of the meeting."

Note: In this context, a business day is a day that settlement takes place for cash equities in the Australian market. Close of business refers to the positions held as at AEST 7pm being the time of closure of the ASX CHESS sub-register on a daily basis and is aligned to existing practices for Corporate Action activity.

ACSA recommends that the fixing of the entitlement date be subject to broad industry discussion – with a suggestion of close of business two (2) days prior to Proxy Lodgment, therefore four (4) business days prior to the meeting date itself.

2. Modify Section 253C into Chapter 2G, Part 2G.4 by adding a new subsection (3) as follows:

"(3) The value of the total interests of a member of a scheme is to be determined at close of business on the business day which is [4 business days] prior to the date of the meeting."

Note: Consider section 253F – the scheme provisions are different to companies because they actually require consideration of value on the trading day/business day before the poll is taken. In other words, the default position for a scheme is to consider the register the day before the meeting.

Consequential amendments are required to section 253F which refers to the value of interests being determined by reference to the trading day or the business day prior to the poll being taken.

Proxy Lodgement

3. Amend Section 250B (1) as follows: Delete "48 hours" and replace by "2 business days"

Note: In this context, a business day is a day that settlement takes place for cash equities in the Australian market.

Recommendation dependency

ACSA notes that the recommendations 1 and 2 are inherently coupled and would need to be adopted together. These remain a priority for our industry group and the institutional shareholder base we provide services to.

Whilst there is no direct dependency between these priority items and changes to Proxy Lodgment changes outlined in recommendation 3, we have raised as a consideration in the broader theme of potential changes to related legislation and process.

Proxy Voting - procedural overview

Participation by institutions in proxy voting is an intermediated process involving the ultimate beneficial owner, their investment managers and proxy advisers, the global custodian (in the case of an off-shore based institution) and local nominee. There are, however, two principal parties – the company and the shareholder. The diagrams below show the timeline from announcement to meeting date, table 1 representing the window shareholders have in which to consider the meeting agenda and resolutions, and decide if and how to vote from the day of the announcement to the regulated voting cut-off. In practice, this is reduced by when they receive full details of the meeting, and the operational cut-off for instruction required by their lodgement agent (custodian or other provider). The corresponding operational processes are outlined in table 2

For institutional investors, the process is important as they may hold hundreds of Australian companies and potentially thousands world-wide. As noted in the Treasury Consultation Paper, AGMs are not distributed evenly throughout the year, with a significant peak for Australian companies occurring in the December quarter. This creates capacity challenges in both voting decision making and processing.

A review of the procedural inefficiencies of the proxy process has merit in its own right. Improved process also drives greater certainty and transparency which strongly complements potential reforms to proxy advice.

TABLE 1 – current “decision timeline”

	Day < -29	Announcement Date (Day - 28)		Proxy Vote (Current law - 48 Hours prior to meeting)	Meeting Date / Time (Day 0)	Day +1 >
Company	Prepares meeting agenda	Issues notice of meeting and required documents			Conducts meeting	Announces meeting results
Institutional Shareholder		Receives notice of meeting	Considers if and how to vote	Lodges proxy vote		

Practical “decision window” = typically the day after announcement to the operational cut-off to process votes.
Approximately 23 – 25 days)

TABLE 2 – operational timeline

	Announcement Date (Day - 28)		Voting Entitlement Date* (Day - X)		Proxy Vote (Day - 2)		Meeting Date / Time (Day 0)	Day +1 >
Company	Issues notice of meeting and required documents		Not currently regulated.		Current practical difficulties with “48 hours” (Day - 2 proposed).	Reviews entitlement to vote and exclusions. Tallies proxy votes	Conducts meeting	Announces meeting results
Institutional Shareholder	Legal owner receives notice of meeting		See <i>Procedural Ambiguity – Record Date</i> below.	Proxy lodgement process	See <i>Procedural Ambiguity – Proxy Lodgement</i> below.			

A further breakdown of the timeline showing the agents and other parties in the process value chain is shown in Table 3.

Procedural Ambiguity – Record Date

- There is no regulated “record date” that determines a shareholders entitlement to vote.
- The Corporations Act and Listing Rules prescribe timeframes for meeting announcement and the cut off for proxy voting lodgement – but are silent on entitlement date.
- The lack of a regulated entitlement date adversely impacts transparency and efficiency of the proxy voting process. It is also out of step with international best practice.
- Common (but not universal or regulated) market practice in Australia is for companies to advise in their notice of meeting that a shareholder’s entitlement to vote will be based on the share registry position¹ at the end of the last business day two business days before the meeting (e.g. a meeting on Wednesday could have holdings taken at close of business on Monday, a meeting on Monday or Tuesday may have holdings taken at close of business on Friday, or on some other day/time as determined by the company over the weekend).
- * **Voting entitlement date** should be set:
 - to ensure a fixed and known voting entitlement position of all shareholders;
 - sufficiently prior to the voting deadline to allow for orderly administration of instructions and lodgement;
 - to create consistency across all listed companies.

¹ A company’s share registry relies on reconciliations with settled positions recorded on the ASX CHESS sub-register, a batch process initiated at 7pm on business days.

Examples

Problems arise because the entitlement date is not standardised and/or is set by companies too close to the deadline for lodging proxy votes.

- The current deadline to vote via proxy is 48 hours before a meeting.
- Companies and their share registry providers do not have the ability to view real-time holdings of shareholders – and as a result they typically take entitlements to vote at the end of the last business day two days before the meeting (e.g. a meeting on Monday or Tuesday would have holdings taken at close of business on Friday, a meeting on Wednesday could have holdings taken at close of business on Monday).
- The holdings in a company can move significantly compromising the integrity of intraday CHES positions for the purpose of establishing entitlement to vote:
 - As a result of trade settlement (a batch settlement process initiates at 11.30am however has a variable completion time within the ASX CHES system based on the agent bank funding settlement). Historical events have demonstrated in extremes that this process can vary over a number of hours
 - The CHES sub-register is open daily until AEST 7pm therefore demand (non-batch) transfers can occur intraday resulting in moving entitlements with an intraday deadline
- Owners can potentially under or over vote as a result of these movements. That is, votes are cast before holdings are set by the company share registries.
- Moving the voting deadline to a time after entitlements are set will create certainty for all holders to vote on a fixed and known position, and create consistency across all listed companies.

See worked examples of timelines overleaf.

Example 1

Company sets meeting for 10am Thursday 10 December
Investor votes over 12,000,000 shares at 10am Monday
Investor holding at 10am Monday 12,000,000 shares
Investor holding at 10am Tuesday 12,000,000 shares
Investor holding at 7pm Tuesday 10,000,000 shares

Due to current uncertainty in determining entitlements, the investor may vote on 12,000,000 shares but 2,000,000 votes may be rejected by the share registry as they would see this as an over-voted holding based on the end of day settled position. A codified entitlement date would remove this procedural uncertainty.

Example 2

Company sets meeting for 10am Thursday 10 December
Investor votes over 15,000,000 shares at 10am Monday
Investor holding at 10am Monday 15,000,000 shares
Investor holding at 10am Tuesday 10,000,000 shares
Investor holding at 7pm Tuesday 15,000,000 shares

The investor may be able to vote over 5,000,000 shares which they are not entitled to. A codified entitlement date would remove this procedural uncertainty and provide a set holding which can be voted upon.

Example 3

Company sets meeting for 1pm Thursday 10 December
Investor votes over 8,000,000 shares at 10am Tuesday
Investor holding at 10am Tuesday 8,000,000 shares
Investor holding at 1pm Tuesday 11,000,000 shares
Investor holding at 7pm Tuesday 11,000,000 shares

The investor may not be able to vote over 3,000,000 shares as they did not hold these shares when they voted even though they were entitled to vote over these shares. A codified entitlement date would remove this procedural uncertainty and provide a set holding which can be voted upon.

Standardisation of voting entitlements improves efficiency and certainty, and aligns to international best practice.

Certainty of process also enhances transparency, especially important to ensuring confidence in market practice, corporate governance and voting on contentious issues.

TABLE 3 (Agents and Providers)

	Day < -29	Announcement Date (Day -28)		48 Hours prior to meeting	Meeting Date / Time (Day 0)	Day + 0 >
Company	Prepares meeting agenda				Conducts meeting	Announces meeting results
Corporate Relations Advisers	Provides advice to the company					
Exchange ² – Listing Rules		Makes available announcement to the market				
Share registry	Maintains the share register, and reconciles to CHES	Issues notice of meeting and required documents to name on register		Collates proxy forms, reconciles and tabulates votes		
Exchange ³ – Settlement		CHES sub-register of shareholders				
Institutional Shareholder	Monitors the investment in company	Receives notice of meeting	Receives proxy advice (where utilised). Instructs agents.	Proxy vote cut-off		
Proxy Adviser ⁴			Provides agreed service to Institutional Shareholder (advice, execution, delegated authority, etc).			

² The Australian Securities Exchange (ASX), National Securities Exchange (NSX) and other licenced exchanges.

³ The CHES sub-register.

⁴ Proxy Adviser firms may provide both advice and platforms that facilitate actual lodgement of proxy votes on behalf of their clients – a combination of functions.

	Day < -29	Announcement Date (Day -28)		48 Hours prior to meeting	Meeting Date / Time (Day 0)	Day + 0 >
Lodgement agent			Facilitates lodgement of proxy votes on instruction of client.			
Investment manager / analyst			Provides agreed service to institutional shareholder (advice, execution, delegated authority, etc).			
Custodian*		Notifies underlying holders of meeting details	Lodges proxy votes for shares legally owned on instruction from beneficial owners (institutional shareholder). For break-down of this function, see <i>Custodial Process</i> below.			

* A brief overview of custodial nominee companies and omnibus accounts is provided on page 11.

Custodial Process – Proxy Vote Lodgement

What	Benefit	Improvement
Reconcile client instructions against total legal holding in omnibus account(s). Tally by For, Against, Abstain and no response.	Guard against over/under voting - a critical step for investors and companies.	A regulated entitlement date greatly simplifies the reconciliation by making the total voting entitlement certain at a known point in time.
Administer recall of stock loans (where applicable).	Align to stock lending agreement and ensures voting rights allocated as intended.	A regulated entitlement date provides certainty on the effect of all stock inventory positions at a known point in time.
Responses to Sec 672 notices (relevant interest disclosure).	Timely response to requests by companies (or other authorised parties, including ASIC) for beneficial holder information, including the exercise of any voting rights attached to their shares.	A regulated entitlement date makes the response to Sec 672 notices certain by matching to the holding at a known point in time.
Administer lodgement of proxy instructions.	Ensure that votes are lodged prior to cut-off by the company/registry.	Modification of the current proxy lodgement regulation to a standard of 2 business days removes current ambiguity.

One specific question asked was whether ACSA’s recommendation for a regulated entitlement date could negatively impact options outlined in the discussion paper – in particular the timeline for potential proxy advice reports being provided for feedback to companies. We believe the answer is “generally no” as entitlement to vote in this context is a **process issue** and unrelated to the actual **proxy voting decision** - including the potential measures *Facilitating engagement between companies and proxy advisers* outlined in the Consultation Paper.

One potential detrimental impact is for shareholders who have their stock on loan. If they decide to vote, then the stock in question must be recalled. If recalled, this reduced the revenue of the stock lender for the period of recall. Accordingly, if the process of finalising proxy advice to shareholders is extended, and the record date set too far in advance, this interaction could extend the period of recall.

Procedural Ambiguity – Proxy Lodgement

The point in time that proxy must be lodged is regulated via (current) Section 250B of the Corporations Act which says that certain documents must be received by the company “at least 48 hours before the meeting”.

This creates practical issues for processing as market settlement cycles and books of record are based on business day cut-offs. This can lead to uncertainty of whether a proxy should be accepted by a company, and confusion for shareholders in determining whether their vote will be counted. This arises in every instance where a meeting date is set so that “48 hours prior” is a weekend or public holiday.

Example:

Commonwealth Bank of Australia, Annual General Meeting, 2020. Summary of key information as announced:

Voting Entitlement Date	Meeting Date	Proxy Lodgement Date
A shareholder’s voting entitlement at the AGM will be the entitlement of that shareholder set out in the register of shareholders as at 9:30am (AEDT) Sunday, 11 October 2020	Tuesday, 13 October 2020. The Meeting will commence at 9:30am (AEDT)	Direct vote or proxy appointment must be received by the Company’s Share Registry, by 9:30am (AEDT) on Sunday, 11 October 2020 (Proxy Close) . Voting may be lodged: <ul style="list-style-type: none"> • electronically, by visiting the Share Registry website, vote.linkmarketservices.com/CBA. • by post to Link Market Services Limited; or • by facsimile.

In practice, the shareholders of a company are confirmed at the end of a business day when the share sub-registers (CHESS and Issuer) are reconciled and after all settled positions are finalised.

Rebasing to a business day measure for proxy cut-off and clearly separated from entitlement date removes this ambiguity in the market.

Overview of custodial holdings and omnibus accounts

Institutional investors

Custodians provide services to institutional investors. The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions.

Foundation services offered by custodians are safekeeping of assets and associated back office services. Safekeeping for dematerialised assets like Australian listed shares is effected by the custodian registering such assets in their name (legal ownership) through their nominee entities.

Institutions are the majority owners of virtually all listed companies of material size in the Australian market.

Participation by institutions in proxy voting is an intermediated process involving the ultimate beneficial owner, their investment managers and proxy advisers, the global custodian (in the case of an off-shore based institution) and local nominee.

Custodial nominee companies

Nominee companies are special purpose vehicles established by custodians to hold client assets.

Omnibus accounts

Traded market securities held by custodians through their nominee companies are typically registered or held in what are known as 'omnibus accounts'.

An omnibus account is a single account in which the assets of a number of clients may be pooled. For example, shares listed on the Australian Securities Exchange may be held in a single CHESS account, with a single holder identification number (HIN), with the custodian's systems tracking individual client (portfolio) ownership.

The use of omnibus accounts brings considerable efficiency to institutional investor servicing, as a number of functions can be undertaken once by security, rather than many times by individual client. Examples include dividend processing, corporate event notification and reconciliation functions.

Examples from Australia's top three listed companies (by market capitalisation, as at January 2020) BHP, CSL and CBA are shown below.

BHP Group Limited (Annual Report 2019)

Twenty largest shareholders as at 23 August 2019 (as named on the Register of Shareholders)⁽¹⁾

BHP Group Limited	Number of fully paid shares	% of issued capital
1. HSBC Custody Nominees (Australia) Limited	696,525,894	23.64
2. J.P. Morgan Nominees Australia Pty Limited	505,431,943	17.36
3. Citicorp Nominees Pty Ltd	149,846,097	5.09
4. Citicorp Nominees Pty Limited -Citibank NY ADR DEP A/C-	140,653,998	5.08
5. National Nominees Limited	102,921,248	3.49
6. BNP Paribas Nominees Pty Ltd -Agency Lending DRP A/C-	70,188,694	2.38
7. BNP Paribas Nominees Pty Ltd -DRP-	28,029,996	0.95
8. Citicorp Nominees Pty Limited -Colonial First State INV A/C-	27,991,279	0.95
9. HSBC Custody Nominees (Australia) Limited -NT-Commonwealth Super Corp A/C-	20,238,305	0.69
10. Computershare Nominees CI Ltd -ASX Shareplus Control A/C-	15,248,848	0.52
11. Australian Foundation Investment Company Limited	13,413,159	0.46
12. AMP Life Limited	8,320,146	0.28
13. HSBC Custody Nominees (Australia) Limited -Euroclear Bank SA NV A/C-	8,101,034	0.27
14. Argo Investments Limited	7,406,304	0.25
15. HSBC Custody Nominees (Australia) Limited	7,402,439	0.25
16. HSBC Custody Nominees (Australia) Limited -GSCO ECA	6,456,673	0.22
17. Newwealth Investments Limited -Wrap Services A/C-	5,144,844	0.17
18. Solium Nominees (Australia) Pty Ltd -VISA A/C-	5,052,527	0.17
19. Milton Corporation Limited	4,288,921	0.15
20. HSBC Custody Nominees (Australia) Limited - A/C 2	3,832,347	0.13
	1,835,505,696	62.31

CSL Limited (Annual Report 2019)

CSL's twenty largest shareholders as at 30 June 2019

Shareholder	Amount	Shares	% Total Shares
1. HSBC CUSTODY NOMINEES (AUSTRALIA) LIMITED		92,767,640	15.71
2. J.P.MORGAN NOMINEES AUSTRALIA LIMITED		86,090,220	14.68
3. CITICORP NOMINEES PTY LIMITED		77,754,509	13.2
4. NATIONAL NOMINEES LIMITED		10,619,898	1.82
5. BNP PARIBAS NOMINEES PTY LTD		8,522,253	1.45
6. CITICORP NOMINEES PTY LIMITED		5,002,386	0.85
7. BNP PARIBAS NOMS PTY LTD		4,386,489	0.75
8. HSBC CUSTODY NOMINEES (AUSTRALIA) LIMITED		2,438,987	0.41
9. AUSTRALIAN FOUNDATION INVESTMENT COMPANY LIMITED		1,916,892	0.32
10. HSBC CUSTODY NOMINEES (AUSTRALIA) LIMITED		1,611,880	0.27
11. CUSTODIAL SERVICES LIMITED		1,362,865	0.23
12. AMP LIFE LIMITED		1,302,590	0.22
13. ARGO INVESTMENTS LIMITED		1,013,000	0.17
14. NEWWALTH INVESTMENTS LIMITED		1,002,223	0.17
15. DWS NOMINEES PTY LTD		791,040	0.13
16. MUTUAL TRUST PTY LTD		704,823	0.12
17. NAVIGATOR AUSTRALIA LTD		646,423	0.11
18. MILTON CORPORATION LIMITED		629,988	0.11
19. DIVERSIFIED LIMITED INVESTMENT LTD		565,000	0.09
20. BNP PARIBAS NOMS (NZ) LTD		531,679	0.09
Top 20 holders of ordinary fully paid shares		308,630,434	52.8
Remaining holders balance		144,528,288	23.89
Total shares on issue		453,158,722	100.00

Commonwealth Bank of Australia (Annual Report 2019)

Top 20 holders of fully paid Ordinary Shares as at 18 July 2019

Rank	Name of holder	Number of shares	%
1	HSBC Custody Nominees	397,408,964	22.38
2	J.P. Morgan Nominees Australia	227,194,600	12.79
3	Citicorp Nominees Pty Limited	117,321,430	6.84
4	National Nominees Limited	54,993,385	3.18
5	BNP Paribas Nominees Pty Ltd	52,285,037	2.94
6	Bond Street Custodians Limited	10,516,197	0.59
7	Australian Foundation Investment	7,900,000	0.44
8	Newwealth Investments Limited	3,671,926	0.21
9	Navigator Australia	3,557,367	0.20
10	Milton Corporation Limited	2,144,670	0.12
11	Argo Investments Limited	3,193,731	0.17
12	Nelis Nominees (Australia)	1,972,869	0.11
13	Ms Barry Martin Lambert	1,643,613	0.09
14	McCooker Holdings Pty Ltd	1,488,999	0.08
15	Invia Custodian Pty Limited	1,466,696	0.08
16	Australian Executor Trustees Limited -RPS SUPER A/C-	1,396,671	0.08
17	Australian Executor Trustees	1,128,471	0.06
18	BNP Paribas Nominees (NZ) Ltd -DRP-	1,118,847	0.06
19	RBC Denia Investor Services Australia Nominees Pty Limited	1,093,191	0.06
20	Joy Wilton Lambert	1,069,250	0.06



ACSA RECOMMENDATIONS TO REFORM PROXY VOTING IN AUSTRALIA

The Role of Proxy Voting in Meetings

Shareholders who wish to participate in a meeting without attending the meeting in person have the right to appoint a proxy (typically the chairperson) to attend the meeting and vote on their behalf. Proxy voting is the primary method by which domestic and offshore Institutional investors, who hold over 70% of issued capital of companies in the ASX 300, vote at meetings.¹ In international markets proxy voting is the primary method of voting used by institutional investors to vote at meetings and whilst there is a lack of standard international best practice the general principles of meeting announcement, entitlement to vote and vote casting are followed.

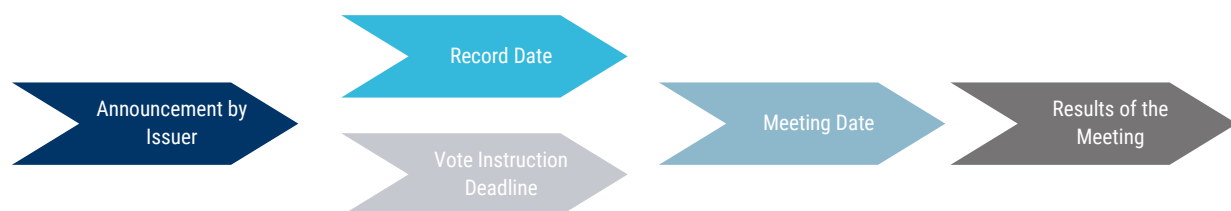
In Australia, legislation governing proxy voting is included in the Corporations Act 2001. This paper calls for changes to this act to support the needs of institutional investors in 2024 and is aligned with long standing industry positions for increasing clarity and accountability in proxy voting.

Recent changes to the Corporations Act 2001

Following the introduction of temporary measures during COVID 19 permanent amendments were enacted in April 2022 to enable companies and registered schemes to:

- convene physical, hybrid (physical and virtual) and, if expressly permitted by a constitution, a fully virtual meeting;
- execute documents electronically, including corporate agreements, deeds and meeting minutes;
- allow members to elect whether to receive meeting-related documents in either physical or electronic form; and
- enable a member or group of members with at least five per cent of the voting power of a listed company or registered scheme to require the appointment of an independent person to observe or report on a poll.

Whilst these changes went some way to modernising the legislation governing meetings, ACSA members believe that there are a number of gaps which in the legislation which govern proxy voting that need to be addressed. The below chart shows the current timetable for voting at Australian company meetings.



Issuer announces the meeting as soon as possible no later than 21 calendar days before the meeting.

Both set 48 hours before the Meeting time (non-business days included i.e. this could be a weekend).

[1] Australasian Investor Relations Association, An Analysis of S&P / ASX300 and NZX50 Share Ownership, https://www.australasianir.com.au/common/Uploaded%20files/AIRA%20Documents/Survey%20Results/Shareownership_in_Australasia_Report_Final.pdf

The Role of Custodians in Meetings and Proxy Voting

The Role of Custodians in Meetings and Proxy Voting

Institutional investors hold around 70% of issued capital of ASX listed companies, in most cases via Custodians. Australian Custodians use omnibus accounts to hold legal title to shares held for their clients and, as a result, ACSA members are collectively seen as the majority owners of virtually all listed companies of material size in the Australian market. As a consequence, the majority of larger listed companies have a significant portion of their shares on issue held in the name of the custodian's nominee company with custodians recording beneficial ownership within their own books and records.

The services provided by Custodians include, amongst other things, support for Proxy Voting through the provision of meetings information including resolution details, provision of entitled voting positions, the ability to cast votes and the provision of meeting results including the number of votes cast for, against and abstained for each resolution. It is common practice for clients of custodians to use electronic platforms to manage proxy voting with ACSA members using specialised outsourced providers to support the Proxy Voting process.

Meeting Announcement

Custodians are required to provide their clients details of meetings including the time, date and location of the meeting as well as all resolution information. Due to ASX Listing Rules this information must be published on the ASX announcement website as part of continuous disclosure requirements. This information is provided in PDF form. In order to disseminate this information, it must be manually rekeyed into the custodian's (or their service provider's) system before being sent to eligible shareholders.

Whilst this information is stored electronically by issuers and their share registries, it is only currently available in an electronic machine-readable format by one share registry. As a result of the manual processes associated with rekeying this information there is a lower level of trust in the data provided to end investors and issuers believe that 61% of meeting announcements are distorted before they are received by end investors who in turn have reported that 24% of meeting announcements received are incomplete.² ACSA members do not agree with these statistics based on the quality controls measures in place to ensure the accuracy of information provided however there is an acknowledgment that the manual nature of the process results in a lack of confidence in the process.

There is clearly a case for change in the way that meeting announcements are transmitted by issuers and consumed by custodians before being passed to institutional investors.

Voting Entitlements

Custodians hold and report shareholdings which are eligible to vote to their clients either through ISO based messages or through proxy portals. As investors buy and sell holdings leading up to a meeting the entitled number of shares which can be voted on changes. This continues until the record date of the meeting where voting entitlements are locked in on settled holdings. In Australia the entitlement to vote is taken as being 48 hours prior to the meeting taking place, this includes non-working days so entitlements can be set on weekends and public holidays.

[2] The Value Exchange, Proxy Transformation in Australia and New Zealand, March 2023 <https://thevx.io/campaign/proxy-voting-in-australia-and-new-zealand/>

The Role of Custodians in Meetings and Proxy Voting

Meeting Voting

Custodians' clients' votes are cast electronically using the custodian's (or a service provider's) system. These votes are cast based on the current position of the client at the time of submitting their vote. As holdings may increase or decrease leading up to a meeting the votes cast for or against a resolution may change leading up to the proxy voting deadline. Client votes are collated leading up to the vote deadline and submitted as a single instruction for all clients due to the use of omnibus accounts. The majority of votes cast on behalf of the clients of custodians in Australia are still cast via fax (the ability to cast votes electronically is only available for companies which use Computershare as a share registry). Fax confirmations are used to verify the transmission of votes but there is not any certainty that all votes cast have been accurately transposed from the fax into the registry's vote recording system. Investors believe that there is a significant risk of votes not being accurately recorded or, in worst case scenarios, not being recorded at all³. Creating certainty in the voting process would go a long way to mitigating this risk.

Proposed Changes to Dissemination of Meeting Resolutions and Agendas

Issues with Meeting Announcements

Each year Australian listed companies make over 130,000 company announcements as part of their continuous disclosure requirements. Within these announcements there are details of over 3,000 meetings which take place each year. Unlike dividend or corporate action announcements, the ASX Listing rules do not require issuers to announce meetings using a standard proforma. Instead, issuers provide a PDF document which includes details of all resolutions and a voting card which summarises each resolution.

In order to provide this information to clients, custodians (or their service providers) must manually identify that a company announcement relates to a meeting and then manually transpose the information into the required proxy voting system. This process slows down the dissemination of information to investors and adds risk to the voting process through the potential for data to be transposed incorrectly.

Proposed changes to reduce risk and increase efficiency

The current method of disseminating meeting details necessitates the need for manual rekeying of information in order for institutional investors to be advised of meetings. This process adds no value to the proxy voting lifecycle and slows down the dissemination of information whilst adding risk. Computershare have made changes to support these concerns, however there is not a consistent approach being taken by all share registries, leading to fragmentation and a lack of standardisation, which are key pre-cursors to automation.

ACSA believes that, given that meeting information is created and stored electronically, it should be made available in machine readable standard format by all share registries. This will reduce risk, increase efficiency, reduce the time taken to release meeting information, and enable standardisation of information across the market.

Proposed Changes to Proxy Voting at Meetings

Issues with voting entitlements and votes cast

The current method of determining entitled positions and submitting a Proxy Vote in Australia has four main challenges:

1. The deadline to submit votes can fall on a non-business day as the Corporations Act does not stipulate that only national business days should be used when determining the deadline for submission of information for a proxy vote (currently being 48 hours before the meeting).
2. It may be impossible to determine an accurate position of voting entitlements. Where the deadline of 48 hours falls between 11:30am and 12:30pm the CHESSE settlement batch is running, at which point it is impossible for any party (register, company, CHESSE, investor, custodian) to accurately confirm a holding in any ASX listed security.
3. Votes must be submitted before the proxy voting deadline. The longer the time period between a vote being cast and the proxy voting deadline, the greater the potential difference in holdings between the votes cast and the position held by an investor. This can result either inadvertent under or over voting.
4. Votes cannot be cast in a standardised electronic format. Faxes are used to submit votes at over 60% companies listed on the ASX. Whilst some progress has been made in enabling the ability to vote electronically, there is still no standard controlled method of submitting votes electronically or for the receipt of an electronic acknowledgement that votes have been accepted and cast.

The above issues ensure that there is no certainty on the voting position which clients cast their votes on, and in turn they therefore lack certainty on both the number of shares which are voted on and that votes have been accepted. Custodians have manual controls to mitigate these risks but with so many parties, steps and inefficiencies it is understandable that issuers and Investors both believe that votes are being lost due to structural deficiencies in the proxy voting landscape within Australia.

Proposed changes to create certainty in voting entitlements

Equities transacted on market in Australia settle on a T+2 basis with transfer of title occurring via the CHESSE settlement batch which commences at 11:30 each business day and concludes by 12:30pm. It is also possible to transfer securities outside of this window from 7am to 7pm.

Custodians process tens of thousands of settlements per day, and positions held in any security can move significantly throughout a business day. However, the vast majority of equity transactions are settled in the CHESSE batch with only a relatively small number of transactions settled outside of the batch occurring up until 7pm.

ACSA recommends moving the proxy voting record date for meetings from 48 hours prior to the meeting to the closure of the equity settlement system, currently 7pm, no more than 5 business days prior to the meeting. It would create a set time when entitlements are taken when no further movements can take place. This certainty of an end of day Record Date ensures that all parties are in alignment on the position that can be voted and there is no ambiguity or subsequent movement in voteable position.

Proposed changes to create certainty in voting entitlements

This is best practice in most developed markets and is aligned with findings and recommendations of previous parliamentary Committee reports on shareholder participation and engagement in Proxy Voting. In 2008 the Parliamentary Joint Committee on Corporations and Financial Services produced a paper title “Better shareholders – Better company Shareholder engagement and participation in Australia which amongst other items included a recommendation (#13) that “The government should consult with industry on amending the record cut-off date”, commenting that changing the record cut-off date may limit mistakes. This recommendation is also aligned with recommendations from the former Australian Government Committee Corporations and Markets Advisory Committee (CAMAC) who in 2012 put out a Discussion paper (The AGM and Shareholder Engagement) seeking feedback on changes to proxy voting in Australia. Despite widespread support for the changes proposed by CAMAC no further work has taken place to modernise Proxy Voting.

Proposed changes to create certainty in votes cast

Securities listed on the ASX must comply with the ASX Listing Rules which dictate that the deadline date for electable Corporate Actions events is at least one business day after the record date. This segregation between entitlement and instruction dates enables investors to submit an election with certainty on their entitled position.

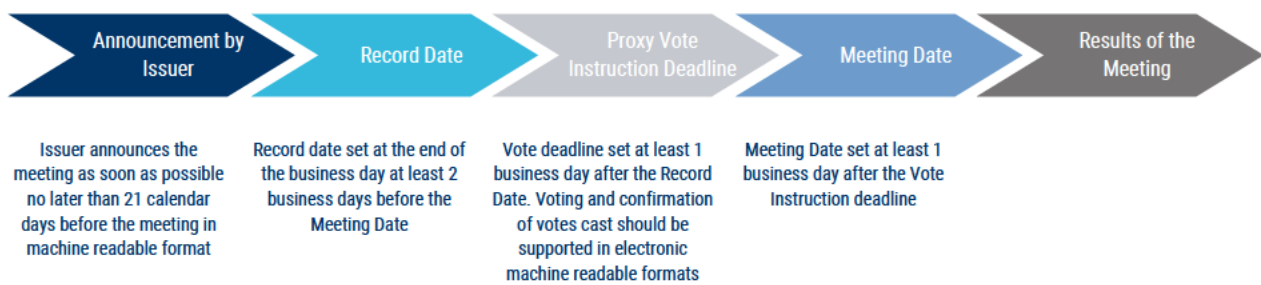
ACSA recommends that this practice be extended to meetings and creating a Proxy Voting instruction deadline at least one business day after the record date. This would create certainty on the number of votes being cast at meeting by each investor and align timetables for meetings with other electable events. This increased level of transparency will enable large institutional holders to verify that the holdings used to cast votes reconcile back to published meeting results. This audit trail is of particular importance to investors when they are voting against a resolution to ensure their opposition to a resolution has been accurately recorded and reflected in the meeting results.

In addition, in Australia there is not currently a standard electronic format or method through which proxy votes can be submitted and acknowledged as being processed. Faxes are still used to submit votes for institutional investors at over 60% of meetings due to the lack of a standardised electronic solution. The use of faxes increases costs for all parties within the investment chain however there has not been a unified effort across all parties to create standards which can push down costs. Faxes also add uncertainty to the voting process for the end investors as confirmation of a fax receipt does not automatically mean that the votes have been transposed and recorded accurately.

ACSA recommends that vote instructions for all meetings in Australia can be received in a standard electronic format (such as ISO2022) and that electronic vote confirmations be issued to confirm that votes have been recorded and cast. Again, the implementation of electronic voting was a recommendation from the Parliamentary Joint Committee on Corporations and Financial Services³ in 2008 and whilst there has been some adoption this is still not supported by all share registries (currently only Computershare support full electronic voting). Mandating a framework for electronic voting would create a clear audit trail and vote certainty for investors.

[3] Parliamentary Joint Committee on Corporations and Financial Services produced a paper title Better shareholders, June 2008, https://www.aph.gov.au/binaries/senate/committee/corporations_ctte/sharehold/report/report.pdf

The ACSA proposed proxy voting timeline is shown below:



International Best Practice

Proxy voting practices vary globally based on local corporations acts in the countries in which listed companies are registered and or traded. Whilst there is no single global best practice in proxy voting, there have been attempts to improve the legislative framework which voting takes place under.

In 2007 the European Union introduced the Shareholder Rights Directive which set out to strengthen the position of shareholders and to reduce short termism and excessive risk taking within companies traded on EU regulated markets. In 2017 the directive was revised (Share Holder Directive II) to establish rules promoting shareholder rights at general meetings of companies with registered offices in the EU and the shares of which are admitted to trading on a regulated market in the EU. Amongst other things the directive set out to reduce friction in the voting process through the dissemination and processing of information through electronic channels. Two of the directives from SRD II are directly aligned with the positions put forward in this paper. Those being:

Article 3b – Transmission of information –which requires information necessary to initiate any corporate event in machine-readable format (that allows interoperability and STP)

Article 3c – Facilitation of exercise of voting rights – which ensure that when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.

Whilst the introduction of the SRD II aimed to create a European Standard for voting, the fact that it is a directive rather than a regulation led to the reliance on each member state updating their local corporation law to align with the directive. This has hampered adoption and the some of the potential improvements which could have been brought about from it. A report on the Implementation of the SRD II Directive by the European Securities Markets Authority in 2023⁴ highlighted the challenges in implementing the directive. It included recommendations to create a “golden operational record” I.E. an electronic record of truth with regards to meeting information as well as reenforcing the concept that entitlements to vote should be set in advance of voting taking place.

SRDII shows that legislative change is key to ensuring that reforms to proxy voting are successfully adopted.

[4] European Securities Markets Authority 2023 https://www.esma.europa.eu/sites/default/files/2023-07/ESMA32-380-267_Report_on_SR02.pdf

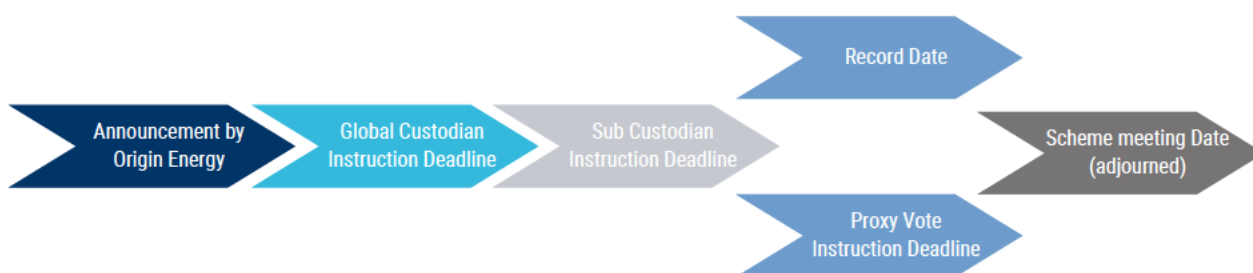
Case study highlighting the need for reform – Origin Energy Scheme of Arrangement Meeting

The need for changes to the proxy voting landscape were highlighted throughout the well-publicised scheme meeting required to take forward the scheme of arrangement between Origin Energy and the Brookfield EIG consortium in late 2023. In order for the Scheme of Arrangement to proceed 75% of shares voted at the scheme meeting and more than 50% of shareholders were required to be voted in favor of the resolution. The scheme meeting was due to take place at 2pm Thursday 23rd November 2023 however following the submission of a new proposal by the Brookfield EIG consortium on Wednesday 22nd November the meeting was adjourned to Monday 4th December 2023. Ultimately the scheme of arrangement did not proceed however it served as a very useful demonstration as to why changes are urgently required within Proxy Voting in Australia.

Meeting Details

The key dates and times for the scheme meeting are documented below:

- Scheme Meeting - 2pm Thursday 23rd November 2023
- Market Deadline for Submitting Proxy Votes - 2pm Tuesday 21st November 2023
- Record Date Entitlement to Vote - 7pm Tuesday 21st November 2023
- Subcustodian Voting Deadline - 7pm Monday 20th November 2023
- Global Custodian Voting Deadline - 7pm Friday 17th November 2023



Origin Energy announced the scheme meeting scheduled for 23rd November 2023 on 19th October

Global custodian Proxy voting deadline set 1 business day before the Sub Custodian Proxy Voting Instruction Deadline at 7pm 17th November 2023

Sub custodian Proxy voting deadline set 1 business day before the Proxy Voting Instruction Market Deadline at 7pm on Monday 20th November 2023

Record Date set as 7pm on Tuesday 21st November 2023.

Market Deadline for Proxy Voting set as 2pm on Tuesday 21st November 2023.

Meeting Scheduled for 2pm on Thursday 23rd November 2023 adjourned

The key dates and times for the adjourned scheme meeting are documented below:

- Adjourned Scheme Meeting - 2pm Monday 4th December 2023
- Market Deadline for Submitting Proxy Votes - 2pm Saturday 2nd December 2023
- Record Date Entitlement to Vote - 7pm Tuesday 21st November 2023
- Subcustodian Voting Deadline - 7pm Friday 1st December 2023
- Global Custodian Voting Deadline - 7pm Thursday 30th November 2023



Origin Energy announced on the 23rd November 2023 that the scheme meeting would be adjourned. On the 27th November 2023 Origin Energy announced that the adjourned meeting would take place on the Monday 4th December 2023 at 2pm.	Record Date remains set as 7pm on Tuesday 21st November 2023.	Global custodian Proxy voting deadline set 1 business day before the Sub Custodian Proxy Voting Instruction Deadline at 7pm 30th November 2023	Sub custodian Proxy voting deadline set 1 business day before the Proxy Voting Instruction Market Deadline at 7pm on Friday 1st December 2023	Market Deadline for Proxy Voting set as 2pm on Saturday 2nd December 2023.	Meeting Scheduled for 2pm on Monday 4th December 2023.
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Background

In the leadup to the meeting the largest shareholder in Origin Energy, made a number of announcements that they would not be supporting the Scheme of Arrangement and that they would be voting against the proposal. During the lead up to the meeting the largest shareholder increased its shareholding in Origin Energy from 12% to a final position of over 17%. Given that historically only around 70% of issued shares are voted on at scheme meetings this holding could translate to around 25% of shares voted at the meeting, which could potentially result in the scheme of arrangement not proceeding. As a result, a large amount of lobbying activity was performed leading up to the scheme meeting to both increase the number of shares voted over and persuade voters to vote in favor of the resolution.

Certainty in Voting Entitlements

Settled holdings were provided from Global Custodians to proxy voting providers at scheduled intervals throughout the day with votable positions updated by voting providers to reflect the updated holdings. As large shareholders continued to change their holdings in the company leading up to the scheme meeting positions were updated to reflect the current holdings with significant volumes of shares changing hands in the lead up to the meeting with over 2% of shares on issue traded on the 17th November and settling on the Record Date. Given that the voting deadline for institutional investors holding their shares through Global Custodians was set on or before the 17th November 2023 none of these shares could have been voted over without manual exception handling.

Certainty in Voting Entitlements continued...

The introduction of a record date for voting before the vote deadline would have created certainty in the number of shares which were being voted over. When the Scheme meeting was adjourned to the 2nd December 2023 the record date for voting remained as the 21st November 2023. This in effect created the situation which this paper is calling for and enabled clarity on the number of shares being voted over. Unfortunately given that the holdings voted on in the first scheme meeting were not the final record date holdings vote providers had to create new meeting events to capture the correct voting entitlements. Once these new events were created the set record date enable full reconciliation of votes to be made for the meeting on 2nd December 2023 and enabled greater certainty for both the issuer and the investors on the number of shares being voted over.

Certainty in Votes Cast

The share registry supporting the meeting did not have an electronic channel available for voting via proxy resulting in Custodian votes being instructed via fax. This created a number of issues due to the lack of automation, audit tracking and manual processing of votes. The share registry deadline for submitting Proxy Votes for the first scheme meeting was 2pm Tuesday 21st November 2023, this was before the record date for setting voting positions of 7pm on the same date. This outcome is standard across the majority of meetings held in Australia and in the case of Origin Energy resulted in votes needing to be submitted on unconfirmed positions. Given that institutional investors positions held through custodians are held in omnibus accounts it is standard market practice for votes to be submitted as close to the voting market deadline as possible given that omnibus positions can change in the lead up to the deadline. Given that voting was performed via fax all votes had to be manually confirmed with the share registry with confirmation of instructions submitted only available at or close to the market deadline. This meant that Origin Energy did not have visibility of the votes cast by the majority of its shareholders until very close to the deadline. This also removed the ability for clients to amend votes which had been cast and made it very difficult for clients to change votes once they had been submitted.

The use of electronic voting coupled with certainty in vote entitlements could have created an environment where votes could have been cast in real time in the lead up to the meeting creating certainty for investors that their votes had been cast and confirmed as being lodged and greater visibility to Origin Energy on how their shareholders had voted.

Whilst this scheme of arrangement did not proceed it is not inconceivable that in the future the outcome of a similar meeting could be closer and be determined by the imprecise nature of the current system. The changes in this paper would create a greater level of clarity and precision in the proxy voting process to a level which should be a minimum expectation in corporate events the size of Origin Energy Scheme of Arrangement.

Conclusions

The changes proposed in this paper are aligned with findings of the Parliamentary Joint Committee on Corporations and Financial Services report Better shareholders – Better company - Shareholder engagement and participation in Australia and the former Australian Government Committee Corporations and Markets Advisory Committee (CAMAC) discussion paper (The AGM and Shareholder Engagement) which recommend a number of changes including 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. Whilst these reports were published in 2008 and 2013 respectively the findings are aligned with research published in 2023 by the Value Exchange. In the years between these reports very little has changed in the way that Proxy Voting is administered in the Australian market.

ACSA believes that the changes proposed in this paper would create certainty in the end-to-end Proxy Voting process for issuers, custodians and investors through the utilisation of digitisation and automation. These changes would enable all parties to accurately reconcile voting positions with vote results and would put Australia in a leading position globally with controls and oversight with regards to governance of the proxy voting process.

We are looking for wide engagement from all stakeholders to support the recommendations in this paper.

