

19 July 2024

Meetings and Documents Review  
c/- Better Business Communications Unit  
Market Conduct and Digital Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [meetingsanddocumentsreview@treasury.gov.au](mailto:meetingsanddocumentsreview@treasury.gov.au)

### **Statutory Review of the Meetings and Documents Amendments – Consultation Paper**

Company Matters Pty Limited (**Company Matters**) welcomes the opportunity to provide feedback on the Statutory Review of the Meetings and Documents Amendments – Consultation Paper (**Consultation Paper**).

Company Matters is part of MUFU Corporate Markets, a division of MUFU Pension & Market Services and is an incorporated legal practice providing company secretarial and governance services to a range of ASX listed companies, as well as other public and private organisations, including not-for-profits companies.

Please note that our colleagues from the MUFU Pension & Market Services registry services team have provided a submission on behalf of registry services, which is separate from this submission.

Company Matters has been using technology since 2016 to facilitate hybrid and virtual meetings and is a strong supporter of companies adopting a fit-for-purpose approach to meeting format.<sup>1</sup>

Across the Company Matters team, we are closely involved with approximately 100 general meetings of members annually, either as the statutory appointed company secretary or by providing “white label” support. This includes for example, drafting and dispatching the notice of meeting to members, responsibility for meeting logistics and (where applicable) working with the registry, preparing the minutes of the meeting and preparing and lodging the relevant forms and announcements with regulators.

As a result, Company Matters is uniquely placed to provide feedback on the Consultation Paper.

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<sup>1</sup> For further information refer to “Modernising the general meeting”, by Melissa Jones, Chartered Secretary – Governance Directions, August 2017, pp. 393-397.

The statistics relating to shareholder meetings generally show an overall significant decline in shareholder attendance at meetings over the past five years.<sup>2</sup> Accordingly, Company Matters supports companies embracing technology to engage with shareholders and increase accessibility and transparency.

## **Supportive of technology neutral meetings**

Company Matters is generally supportive of:

- companies having the ability to adopt a fit-for-purpose approach to meeting format and the flexibility to adapt to suit the company and shareholder base (which may change from time to time); and
- the use of technology to make it simpler for shareholders to interact with the companies in which they invest, as well as potentially reducing costs and environmental impacts and supporting sustainability initiatives.

While a hybrid or virtual meeting will not suit every company and shareholder, the benefits are considerable, including:

- the ability for companies to reach a wider shareholder base and engage with investors in real time regardless of geographic location;<sup>3</sup>
- shareholders having the choice to select how they engage with the companies in which they invest, which is likely to see an increase in shareholder participation and engagement; and
- a potential reduction in costs to companies and environmental impacts — which in turn are beneficial to all shareholders and stakeholders.

To date, we are not aware of any disenfranchisement of shareholders using meeting technology:

- the *Corporations Act 2001 (Corporations Act)* provides that a company must give members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.<sup>4</sup> In addition, “the chair of an AGM must allow a reasonable opportunity for

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<sup>2</sup> <https://www.mpms.mufig.com/agmsnapshot/2023-meetings/attendance.html>.

<sup>3</sup> The ASX Corporate Governance Council Corporate Governance Principles and Recommendations 4<sup>th</sup> Edition provides “*The Council would encourage listed entities with large or geographically diverse registers to consider how technology can be used to facilitate the participation of security holders in meetings. This may include, for example, live webcasting of meetings so that security holders can view and hear proceedings online, holding meetings across multiple venues linked by live telecommunications, and hybrid meetings that allow shareholders to attend and vote in person, by proxy or online.*” We note that this section has been amended in the consultation materials for a proposed fifth edition to provide: “*Listed entities should hold general meetings at a reasonable place and time, with any technology used giving security holders as a whole a reasonable opportunity to participate. Investors expect that listed entities with large or geographically diverse registers will use technology to facilitate the participate of security holders in general meetings.*”

<sup>4</sup> Corporations Act, section 249S(1).

the members as a whole at the meeting to ask questions about or make comments on the management of the company”<sup>5</sup>;

- in our experience, companies are highly cognisant of their obligations under the Corporations Act and the need to allow shareholders participating both at the physical meeting and online a reasonable opportunity to ask questions about or make comments on the management of the company, the remuneration report and the financial statements and audit;
- ahead of shareholder meetings, many companies hold rehearsals, including to test the technology and confirm the chair and key stakeholders are comfortable with the technology;
- the moderator(s) are a key part of facilitating an online component of a meeting — the moderators essentially act as the connection between the chair and the shareholders participating online. It is the role of the moderator to manage, receive and electronically send any questions/comments submitted during the meeting to the chair; and
- like physical meetings, most companies using virtual meeting technology have processes in place to maintain a record of any questions submitted online and an alternative script and procedures prepared in the event the company experiences any issues, including technological issues.

## **Specific feedback on the Consultation Paper**

Company Matters generally supports the permanent amendments made to the Corporations Act by the *Corporations Amendment (Meetings and Documents) Act 2022 (2022 Act)*, however has two matters to raise for review:

- providing a technology neutral approach to meetings in the Corporations Act; and
- removing the requirement for members “to exercise orally” any rights to ask questions and make comments.

Further detail is provided below.

### **1. Providing a technology neutral approach to meetings in the Corporations Act**

Currently, the Corporations Act only permits a virtual only meeting if required or permitted by the company’s constitution expressly.<sup>6</sup>

Our view is that the Corporations Act should provide a technology neutral approach to meetings and permit a company to adopt a fit-for-purpose approach to meeting and embrace technology developments that support shareholder engagement that is appropriate for the company, as well as being suitable to provide for any future technological or other advances.

The Corporations Act should be amended to permit the use of virtual meeting technology, irrespective of a company’s constitution.

The Corporations Act should provide companies with sufficient flexibility to hold meetings which are fit-for-purpose for the shareholder base – this is not a one size fits all approach.

<sup>5</sup> Corporations Act, section 250S(1).

<sup>6</sup> Corporations Act, section 249R(c).

Maximum flexibility should be afforded to companies to adopt a meeting approach appropriate for the organisation.

**2. Removing the requirement for members “to exercise orally” any rights to ask questions and make comments**

Currently, the Corporations Act provides that if the meeting is being held using virtual meeting technology, the virtual meeting technology must be reasonable and “allow the members...as a whole, **to exercise orally** and in writing any rights of those members to ask questions and make comments.”<sup>7</sup>

Accordingly, in our experience, companies using virtual meeting technology (for both virtual and hybrid meetings) are using telephone lines or technology built into the meeting platform to allow members to ask questions and make comments orally.

Further, in our experience, members are not utilising the telephone lines/technology to orally ask questions, adding unnecessary complexity and cost to the meeting, with no benefit to members.

We submit that section 249S(7)(b) of the Corporations Act be amended to either of the following:

- *“allow the members who are entitled to attend the meeting, and do attend the meeting using that virtual meeting technology, as a whole, to exercise orally **or** in writing any rights of those members to ask questions and make comments”*: or
- *“allow the members who are entitled to attend the meeting, and do attend the meeting using that virtual meeting technology, as a whole, to exercise any rights of those members to ask questions and make comments”*.

We do not consider that the proposed amendments would disenfranchise shareholders for the reasons outlined above.

Please do not hesitate to contact us if you wish to discuss any of these matters in more detail.

Yours sincerely

**Company Matters**

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<sup>7</sup> Corporations Act, section 249S(7)(b).