

19 July 2024

meetingsanddocumentsreview@treasury.gov.au

Director
Better Business Communications Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir,

**RE: Statutory Review of the Meetings and Documents Amendments Consultation Paper
(Consultation Paper)**

Who we are

Governance Institute of Australia (GIA) is a national membership association that advocates for a community of governance and risk management professionals, equipping over 8,000 members with the tools to drive better governance within their organisation. Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted, and private companies, as well as the public sector and not-for-profit organisations. They have a thorough working knowledge of the operations of the markets and the needs of investors.

We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO. We are a founding member of the ASX Corporate Governance Council. We are also a member of the ASIC Business Advisory Committee, the ASX Business Committee and the ACNC Sector Users Group.

Our members are typically company secretaries and directors in governance roles in companies and registered schemes (collectively, companies) or public sector bodies or working in risk management roles in the private and public sectors. They are actively involved in all aspects of company meetings and the execution of documents by companies. Their knowledge and expertise have informed this Submission which focuses on annual general meetings and other company meetings. Our members consider that the review of the amendments should be based on data about actual shareholder behaviour rather than anecdotes or preferences.

Preliminary comments

- Our members support all forms of positive shareholder engagement with all types of shareholders and have consistently advocated for modernisation of the *Corporations Act, 2001* (Corporations Act). They consider companies should have the flexibility to execute documents, communicate with their members and shareholders (collectively, shareholders) and hold meetings in the way best suited to their unique circumstances and which also allows for the rapid development of technology.

- Our members encourage participation by shareholders at meetings and facilitate this in a number of ways. Given the extremely low take up of telephone questions, our members recommend amending the Corporations Act to remove the requirement to have telephone lines available for meetings.
- A preference for one type of meeting using technology over another does not amount to technology neutrality – one of the original stated aims of the amendments. It has also enshrined in legislation a form of meeting which may quickly be superseded by other technology. Amendments to the Corporations Act should be fit for the future and not require amendment in a relatively short space of time because technology has advanced.
- Boards currently make a range of significant decisions on behalf of shareholders. They should also be able to determine the appropriate format for a shareholder meeting which provides shareholders with a reasonable opportunity of participating in a meeting. In addition, there is a range of existing mechanisms and protections by which shareholders can make their views known to the board, such as the ability to remove directors and the right of five per cent of shareholders to requisition or call a meeting. The chair is also subject to duties around the conduct of the meeting. As noted in our submissions prior to passage of the amendments, our members do not support the requirement for a constitutional amendment by way of a special resolution to permit virtual meetings.¹
- The approach in the legislation seems to assume virtual AGMs are particularly subject to being poorly administered. This ignores the fact that a poorly run meeting is a poorly run meeting, regardless of the format – physical, hybrid or virtual.
- If improvements are needed to better facilitate participation our members consider that they would be better provided through industry guidance.
- Our members fully support retaining flexibility for directors to join board meetings using technology as required, including, for example, where a director is unable to attend an in person meeting due to illness or foreign residence. The amendments to enable the giving, sending and receipt of electronic meeting-related documents were a long-overdue modernisation of the notice provisions of the Corporations Act, subject to shareholders having the right to opt in to paper-based communications. There is an opportunity to further streamline these processes, particularly where shareholders have not made an election about the form of communications, by moving to an opt in process similar to that for annual reports, which has been operating effectively since first introduced in 2012.
- Our members universally report that electronic execution of documents is working well apart from continuing difficulties with the acceptance by some state land and other registries of documents executed electronically and some financial institutions continuing to require ‘wet ink’ signatures for financing large sums. Our members continue to advocate modernising and harmonising document execution across the Commonwealth should be a key priority for Government.

Governance Institute 2023 AGM member survey (2023 AGM Survey)

As noted above our members consider that the review of the amendments should be based on data about actual shareholder behaviour rather than anecdotes or preferences. For this reason, we surveyed our members in early 2024 about their 2023 AGMs. We also asked for information about AGMs between 2019 and 2023 to better understand the impact of the COVID-19 pandemic on AGMs, the impact of the amendments and to assess any changes in practice and behaviour over the five-year period. While the response rate was relatively low (49 respondents), more than 40 per cent of respondents are from ASX 50 companies and more than 40 per cent of respondents are from ASX 100 companies. Results therefore reflect the actual behaviour of hundreds of thousands of shareholders across the collective respondents. The full results of the survey are included with this Submission.

¹ See Governance Institute submissions [Treasury Laws Amendment \(Measures for Consultation\) Bill 2021: Use of technology for meetings and related amendments](#) 16 July 2021, [Treasury Laws Amendment \(Measures for Consultation\) Bill 2021: Use of technology for meetings and related amendments](#) 10 September 2021 and [Corporations Amendment \(Meetings and Documents\) Bill 2021](#), 8 November 2021.

The key findings of the 2023 AGM Survey are:

- between 2020 and 2022 the meeting format chosen by companies for AGMs clearly indicates the impact of COVID-19 and restrictions on physical gatherings
- a number of respondents offered a hybrid AGM format at their most recent (2023) AGM but the physical format also increased in popularity
- despite the lack of restrictions on physical gatherings the number of meeting attendees attending in person has not returned to pre-COVID levels despite significant increases in the size of company registers
- the results indicate that while a small number of shareholders used the telephone to ask questions in 2020 there was almost no use of telephones for asking questions in subsequent years and none in 2023
- notwithstanding there is limited ability for most companies to hold virtual meetings, the existing legislative framework provides companies with a degree of flexibility to offer the format that suits their needs and the needs of their shareholders within current constraints (that is, largely hybrid or in person meetings) and companies and shareholders are taking advantage of the flexibility currently available
- while the number of questions asked online at AGMs has increased in line with the increased availability of technology at AGMs, sending questions in advance of the AGM continues to be the most popular way of asking questions at an AGM, and
- while most companies surveyed send hard copy proxy/voting forms, very few send hard copy Q&A forms.

Share registries Computershare and Link Market Services both produce annual reports on listed company AGMs.² These Reports on 2023 AGMs confirm similar trends to the 2023 AGM Survey, with some differences. For example, the Computershare 2024 AGM Intelligence Report (AGM Intelligence Report) indicates a higher number of in-person meetings than the 2023 AGM Survey, attributable to the larger size of the Computershare sample. The AGM Intelligence Report notes many companies in the ASX 200 – 300 and many companies outside the ASX300 hold in person AGMs for reasons of cost and convenience.

Responses to consultation questions

Consultation questions on meetings

1. How has the experience of running company or registered scheme members' meetings changed since the amendments? What have been the effects of the amendments on the costs of holding AGMs or other meetings?

The main change in running company meetings has been the broader range of formats in use. The ability to adopt a range of formats for the AGM means companies and boards have chosen to adopt the format they consider best meets the needs of their shareholder base in a particular year, within the current constraints of the legislation. The 2023 AGM Survey confirms that attendance at AGMs in all formats continues to decline and has not recovered to pre COVID-19 levels. This trend was evident for many companies for some years prior to COVID-19.³

In person meetings

² See [2024 AGM Intelligence Report](#), Computershare and Georgeson and [2023 Annual AGM Snapshot](#), Link Market Services. Link Market Services is a part of MUFG Corporate Markets, a division of MUFG Pension & Market Services.

³ See *Rethinking the AGM A Discussion Paper*, Chartered Secretaries Australia and Blake Dawson Waldron, 2008 at page 2 and *Does the Annual General Meeting (AGM) need to become an eAGM*, Governance Institute of Australia and LexisNexis 2016 at page 2.

Our 2023 AGM Survey indicates that, particularly for larger companies, the preferred format is a hybrid meeting but there is also a trend towards holding in person meetings, including in person meetings with a live webcast.⁴ Companies with large numbers of engaged retail shareholders report that these shareholders welcome the opportunity to engage with the board and management at in person AGMs. Many smaller companies, particularly smaller listed companies welcomed the return to in person meetings.⁵ For these companies it is more efficient and cheaper to hold an in person meeting and the format works well. Some charities and not-for-profits have also returned to holding in person AGMs.⁶ Our members report that the experience of running an in person AGM remains largely unchanged since the amendments and it is critical that the option to hold an in person meeting is retained.

Some members report that the trend toward in person meetings is linked to companies' inability to hold wholly online meetings without constitutional amendments which are challenging to obtain and given the cost and complexity of holding a hybrid meeting may not be in the best interests of shareholders taking into account the individual circumstances of the company.

One trend that has become more obvious since companies returned to in person AGMs is the increased number of disruptions from shareholder activist groups, some of whom attend as proxies for shareholders who typically hold small parcels of shares. The trend has also been observed at AGMs in other jurisdictions.⁷

In Australia, disruptions at in person AGMs are more common in larger listed companies in the financial services, mining and energy sectors. Members at these companies report they now routinely engage security staff to attend AGMs and have instituted stricter meeting registration and security requirements, such as bag screening. At one 2023 AGM members of the company secretariat team were escorted by security staff for the duration of the meeting to ensure their personal safety. Company staff working at the AGM also reported to management they did not feel safe in the AGM environment. Our members report these types of disruptions also negatively impact retail shareholders who have expressed concern for their personal safety and consider these sorts of disruptions disenfranchise retail shareholders.

Hybrid meetings

While the preferred format for 2023 AGMs for larger companies according to the 2023 AGM Survey and other Reports was a hybrid meeting our members report these meetings are more complex to run and involve more risk management than single format meetings. This was the case both before and after the amendments. The complexity results from the need to coordinate all elements of the meeting to ensure they run in tandem and that all attendees can participate. Companies address this by significant pre and contingency planning, including conducting multiple rehearsals, particularly of the technology. As with any event there are detailed run sheets and scripts covering a range of contingencies.

Some members report that they have opted for the hybrid format having regard to external pressure from members of the investment community such as proxy advisers, notwithstanding the format is difficult to justify in terms of cost, efficiency and complexity given the low representation of members at meetings for most companies.

Many companies use platforms provided by the large share registries for the online component of these meetings. Our members report these platforms, first introduced in 2020, work well and have been upgraded as technology evolves. The key challenge and risk with a hybrid AGM is the potential for technology failure. A technology failure, depending on the AGM quorum requirements in a company's constitution, could

⁴ These trends are confirmed by the Computershare AGM Intelligence Report (page 25) and Link Market Services [AGM Snapshot](#) Reports on 2023 AGMs – see Footnote 1 above.

⁵ See Footnote 3 above AGM Intelligence Report at page 25.

⁶ We anticipated this would be the case in our November 2021 [Submission](#) to the Senate Economics Legislation Committee at page 3.

⁷ See AGM Intelligence Report at pages 30 and 32.

mean the meeting has to be adjourned and reconvened at a later time or date which is extremely inconvenient for shareholders attending in person..

Share registries now routinely have shareholder guides about participating in online meetings with trouble shooting tips and FAQs prominently available. Companies have contingency plans in place to ensure that wherever possible meetings can continue. Significant management time is required to ensure that these plans are in place when providing a hybrid meeting. Companies also work closely with share registries and other service providers on these plans.

Fewer smaller companies, charities and not-for-profits hold hybrid meetings. Where they do they typically use one of the less known meeting video platforms or Teams, Zoom or Google Meet to hold AGMs. These platforms and systems now enable voting and asking questions through a chat function or a microphone during the meeting. Our members report these technologies are user friendly, work well and are well received by shareholders and members. Increased familiarity with participating in a wide range of online activities such as medical and other appointments and social gatherings in recent years means most attendees can participate and meetings run smoothly.

Virtual AGMs

Apart from the improvements to technology noted above, the experience of running a virtual meeting also remains largely unchanged since the amendments. As the 2023 AGM Survey indicates, fewer large, listed companies hold virtual only AGMs, although these are common in large, listed companies in other jurisdictions. The reason for not holding a virtual AGM typically relates to the nature of the company's shareholder base and whether a company's constitution allows virtual meetings – see the response to Question 4 below. Some large, listed companies, with significant numbers of retail shareholders whose constitutions allow virtual meetings have chosen to hold hybrid AGMs. Other large, listed companies, particularly in the technology sector are permitted by their constitutions and do hold virtual meetings with no negative media or other commentary. One large listed company reported the substantial benefits of holding a wholly online meeting in terms of broadening access to their global shareholders and putting shareholders on a level playing field, with significant member participation and engagement achieved.

Costs

While it is difficult to make direct comparisons about costs of holding AGMs before and after the amendments some information about costs provided by our members is set out in **Attachment B**. It should be noted that while some costs such as mailing have decreased because of lower printing costs, some costs such as postage, venue hire and security have increased. At least one member reports the significant positive impact on the environment created by not using 488,000 sheets of paper. Costs also vary depending on the meeting format. Our members note that hybrid meetings are typically more expensive.

Retail shareholders

Companies value their retail shareholders. They not only 'ground' a company's register they are also a source of valuable insights into community views about companies and their operations. However, retail shareholders are no longer the homogenous group of 'mums and dads' referred to in media commentary about retail investors. In 2021, a higher proportion of younger investors was observed investing in the stock market – over three in ten of those aged below 45 years. In particular, the group aged 18-29 investing in the stock market increased significantly between 2020 to 2021 and as the 2023 AGM Survey indicates the size of companies' share registers has increased.⁸ For younger shareholders, often digital natives, not necessarily resident in a capital city (or even, the same state or country) the ability to participate in annual general meetings, manage their shareholding and obtain information about a company in the way in which

⁸ See [2021 Australian Retail Investor Confidence Survey](#), Chartered Accountants Australia and New Zealand, 13 September 2021 at slide 19.

they participate in so many areas of their lives, by using technology is critical. At the other end of the spectrum are less technologically 'savvy' and perhaps more conservative retail shareholders who place a high value on the ability to interact with a company's board and management at an in person meeting.

Well governed companies take their responsibilities to retail shareholders seriously. Our members consider that the current meeting approach does not always provide the best format for engagement with some groups of retail shareholders. Some companies now hold retail investor days or online briefing sessions specifically for retail shareholders. The behaviour of some activists at meetings impacts companies' ability to interact with their retail shareholders and for these shareholders to ask questions about the company.

Registered schemes

Most members consulted for this Submission had limited experience of registered schemes. Members whose corporate structures include registered schemes reported the following:

- A company with two unlisted schemes in its structure held a hybrid meeting for the most recent AGM. The only online attendee was a shareholder activist. The company will hold a physical meeting for its next AGM.
- Three companies with stapled structures held a combined meeting for both entities in the structure.
- Another company with a registered scheme held an in person AGM with a webcast.

2. How have the amendments affected members' participation in meetings and has this affected the exercise of shareholder rights or corporate governance?

Our members consider the best measures of judging participation in meetings are attendance, voting and questions. This is with the caveat that for many large, listed companies the largest group of shareholders on their registers are institutional shareholders. Institutional investors generally lodge their votes in advance of the meeting. While their staff members sometimes watch webcasts of meetings or since online meetings have become more common, log in as guests to watch meetings, they rarely attend or participate actively during the meeting.

Our members do not consider the amendments have negatively affected the exercise of shareholders' rights or corporate governance.

Attendance

The 2023 AGM Survey indicates the highest level of attendance at AGMs over the last five years occurred in 2020 at the beginning of the COVID-19 pandemic. This is explained by the fact that all meetings were held online, there were restrictions on movement across the country and many shareholders appear to have taken the opportunity to attend an AGM given the limitations on many other activities. This trend continued in 2021, noting that border and other restrictions remained in place during that period. As the 2023 AGM Survey indicates the number of guests and shareholders/proxy holders was very small in 2020 and 2021, increased in 2022 and 2023 but has not recovered to 2019 levels. The average number of guests at AGM venues displays a similar trend. The 2023 AGM Survey (Figure 11) indicates an overall drop in total attendance at AGMs (shareholders/proxy holders and guests) from 2022 to 2023. Interestingly, the 2023 AGM Survey (Figure 13) indicates that while the total number of shareholders on company registers has increased significantly during the five-year period between 2019 and 2023, participation in terms of attendance at AGMs, online or in person has not necessarily increased.

Voting levels

The 2023 AGM Survey (Figure 14) indicates just over 50 per cent of issued capital voting in 2019 and 2020, peaking in 2021 with a slight decline in 2022 and a small drop in 2023 to 49.4 per cent. The AGM Intelligence Report (page 27) indicates higher levels of voting in ASX 300 companies. The Link Market Services 2023 AGM Snapshot (AGM Snapshot) makes the following comments about voting levels:

The total number of investors who voted in 2023 slightly rose, but it was still low compared to 2017-2021. This shows again that the smaller/retail holders are choosing not to vote with lower proxies received. This is also shown in the ... 'Percentage of Voting Issued Capital' that reveals the issued capital for the S&P/ASX 100 growing by more than 7%.

Issued capital voted was up across the S&P/ASX indices from last year and the S&P/ASX 100 saw the largest amount of issued capital voted being 73.89% compared to the past 5 years. This again highlights the nominee holdings influence over the results of items being voted on who typically vote a large percentage of their holdings with a particular focus on these largest clients.⁹

It would seem retail investors are voting less but that overall issued capital voted has increased demonstrating that a significant number of shareholders remain sufficiently engaged to lodge their votes.

Questions

There were no online meetings in 2019 and the 2023 AGM Survey indicates questions were either submitted prior to or at the meeting. Where questions are submitted in advance of the meeting companies typically ensure the topics covered in question are covered in the chair's or CEO's addresses or answered at the meeting. Figures 16 – 18 of the 2023 AGM Survey also indicate that sending questions in advance of the meeting was the preferred means of asking questions. Figure 18 indicates that once in person AGMs recommenced slightly more questions were asked at the AGM than online. Figure 19 demonstrates that in 2023 while most questions were received in advance of the meeting, slightly more questions were asked at in person meetings (in person AGM or in person component of a hybrid AGM) than online. Overall shareholders continue to participate at AGMs through their questions.

The topic of AGM questions is one that attracts significant investor and other commentary. At an in person meeting Q&A sessions are conducted in full view of all present. Our members noted that this has the benefit of the meeting itself disciplining attendees trying to ask the same question multiple ways or asking questions unrelated to the meeting.

Our members are aware of investor and other commentary indicating a belief that companies 'cherry pick' or edit questions and that prior to the amendments there was concern that moving to virtual meetings would increase this risk. They also note that this is also a risk with the online component of a hybrid meeting. Our members report that they have not encountered 'cherry picking' of questions since the amendments.

Companies have a range of approaches to Q&A sessions at virtual and hybrid meetings. With hybrid meetings it is important to ensure that the meeting flows and that in person and online attendees can ask questions. Some chairs alternate between the questions from the room and online questions, others take all questions received online first followed by questions from those in the room or the reverse. Some companies have a person, separate to the chair act as MC. Some companies direct all questions to the chair, others to the MC or a moderating team from the company secretariat and investor relations teams who then relay questions to the chair or the most appropriate person for a response.

Our members report that from a company's perspective, particularly large high-profile companies which receive large numbers of online questions, the challenge is achieving a balance between ensuring an individual shareholder is able to ask their particular question on topic x and answering multiple questions on topic x. For example, a member from a large, listed company reports receiving 63 online questions on topic y. The only practical way of responding to these questions was to provide one comprehensive answer to all 63 questions on topic y.

Our members also report that one trend that has become apparent since online questions were introduced is for some shareholders, typically activists seeking publicity for their cause, to 'flood' online question portals with multiple questions sometimes about the same issue, sometimes multiple issues. This behaviour

⁹ See [2023 AGM Snapshot](#) accessed 15 July 2024.

interferes with companies' ability to ensure all shareholders can access the online question portal, participate in the meeting and receive answers to their questions about the company from the board and management. Some of our members also report this issue is a key factor in their board's decision to hold a physical meeting to provide a greater opportunity for retail shareholders to participate and ask questions during the meeting.

Use of telephones for questions

As we noted in our Submission on the Exposure Draft of the amendments, while some companies provided telephone lines to enable verbal questions at AGMs they were not widely used.¹⁰ The 2023 AGM Survey (Figure 19) confirms that no respondents to the Survey received questions over the telephone. Some platforms now include the ability to ask verbal questions within the platform. Our members also report that telephone lines add to the complexity of the meeting. Given telephone lines are rarely if at all used our members consider the requirement should be removed.

3. If improvements are needed to better facilitate members' participation and corporate governance, what improvements could be made to the conduct of online or hybrid meetings?

Our members consider the data indicates that shareholders can, and do, participate in online and hybrid meetings. This is demonstrated by the various measures of engagement referred to in the response to Question 2 above. If improvements are needed to better facilitate participation our members consider that they would be better provided through industry guidance such as the Governance Institute, Australian Institute of Company Directors, the Business Law Section of the Law Council of Australia and Australasian Investor Relations Association 2022 Guidance on the amendments.¹¹ Governance Institute and its members would be willing to work with key stakeholders to develop appropriate guidance.

We also note that the current draft of the next edition of the Corporate Governance Principles and Recommendations includes guidance for listed companies on facilitating shareholders' participation at online and hybrid meetings.¹²

4. 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?

Our members have consistently advocated that companies should be permitted to hold wholly online meetings where they consider this is appropriate for their shareholder base.¹³ They consider the requirement for a constitutional amendment to hold a wholly online meeting is prescriptive and inconsistent with the need for inbuilt flexibility in the Corporations Act to ensure it continues to be technology neutral and fit-for-purpose in the face of rapidly evolving technology. It also indicates that one form of meeting is to be preferred over another. In our members' experience amendments to the Corporations Act remain for many years. Companies want to have high quality, fit for purpose member engagement and need to have the flexibility in a non-prescriptive manner to hold meetings in the way best suited to their unique circumstance.

There are key benefits to holding meetings using technology without prescribing a format:

¹⁰ See Governance Institute Submission [Treasury Laws Amendment \(Measures for Consultation\) Bill 2021: Use of technology for meetings and related amendments](#) 10 September 2021 at page 8.

¹¹ See [Electronic governance reforms: meetings and documents](#), 14 March 2022, Governance Institute of Australia, Australian Institute of Company Directors, the Business Law Section of the Law Council of Australia and Australasian Investor Relations Association, 14 March 2022.

¹² See [Consultation Draft for a proposed fifth edition of the Principles and Recommendations](#), ASX Corporate Governance Council.

¹³ See Footnote 1 above.

- Our members want to see Australia embrace technological change and the benefits of new ways of engaging with shareholders and do not want to see technology disrupt the core purpose of AGMs, which is to hold boards accountable. They want to see technology enable that core purpose and greater digital inclusion of shareholders and members.
- Our members have seen the benefits of online participation at AGMs and while levels of engagement have dropped since the height of the COVID-19 pandemic in 2020 the ability to hold a wholly online meeting can be a strong enabler of engagement. Wholly online meetings provide broad access and put shareholders on a level playing field in terms of their participation, which is a potential disadvantage of the hybrid format.
- As noted earlier, retail shareholders are no longer the homogenous group of ‘mums and dads’ referred to in media commentary about retail investors. For younger shareholders a virtual meeting enables them to participate in an annual general meeting in the way in which they participate in so many areas of their lives, by using technology.
- Meetings using technology, especially wholly online meetings, are extremely helpful for charities, membership associations, not-for-profits and other companies limited by guarantee with large member bases spread widely across Australia. Online meetings enable members who would not normally attend meetings because of distance, age or disability to be present at meetings. Wholly online meetings are also helpful for larger companies in situations where they need to hold general meetings, for example, to approve a scheme.

Prescribing a format for an AGM presupposes that a particular meeting format will prevent poor practices. The format of a meeting does not prevent companies from providing poor shareholder experiences at a meeting. A poorly run meeting is a poorly run meeting, regardless of the format – physical, hybrid or wholly online. This is where organisations such as Governance Institute play a key role in educating our members and other stakeholders about good practice. For this reason, we jointly with other bodies issued several sets of guidance to assist members and others during the COVID-19 pandemic and after passage of the amendments.¹⁴

The main impediment for those companies which want to make greater use of wholly online meetings is the views of investor groups and proxy advisory firms. As we noted in our November 2021 Submission to the Senate Economics Legislation Committee at least one investor group representative and several proxy advisory firms were recommending at that time that institutional investors vote against any Top 300 listed company proposals to amend constitutions to allow virtual meetings.¹⁵

Since the amendments at least one proxy adviser operating in the Australian market recommends voting against constitutional amendments to permit virtual only meeting in their published proxy voting guidelines.¹⁶ Another proxy adviser indicates that it will only support these constitutional amendments on a number of conditions.¹⁷ The Australian Council of Superannuation Investors supports a hybrid model for AGMs.¹⁸ As noted in our Submission, *Greater transparency of proxy advice*, these groups play a significant role in the outcome of resolutions, particularly for ASX300 companies.¹⁹ Some of our members who have sought to implement the required constitutional amendments by special resolution to permit wholly online

¹⁴ See for example, [Guidance: Further update on online AGMs, electronic document execution and digital shareholder communications](#), Governance Institute of Australia, Australian Institute of Company Directors, Australasian Investor Relations Association and The Business Law Section of the Law Council of Australia, 7 September 2021.

¹⁵ See November 2021 [Submission](#) to the Senate Economics Legislation Committee at page 4.

¹⁶ See [Australia Proxy Voting Guidelines Benchmark Policy Recommendations](#), ISS, 1 July 2024 at page 6.

¹⁷ See [Glass Lewis Benchmark Policy Australia 2023](#) current as at 14 July 2024.

¹⁸ See [ACSI Governance Guidelines](#) December 2023 at page 40.

¹⁹ See Governance Institute Submission [Greater transparency of proxy advice](#), June 2021.

meetings have reported the significant influence of proxy advisers in resolutions not being carried, notwithstanding, in most cases, proxy advisers' clients do not attend meetings.

Overseas experience

Governance Institute continues to advocate that companies should have the ability to hold meetings in the way best suited to their unique circumstances and shareholder/member base and should not be required to amend their constitutions to hold wholly online meetings. Our members note that online meetings are commonly held in other jurisdictions with which they interact such as the United States.²⁰

5. Have you experienced technological issues when running or attending a meeting with an online component? If yes, what were they, were they addressed, and how did this occur?

Our members report that for the most part meetings using technology run smoothly and where technological issues occur companies make significant efforts in conjunction with their service providers to address these issues as they occur to avoid the reputational damage that may result if the meeting is disrupted by a technological issue. Share registries and technology providers are in the business of facilitating online meetings and in our members' experience are extremely motivated to ensure that technological issues do not occur or are resolved as quickly as possible. It should also be noted that technology issues and other physical disruptions such as power outages or transport disruptions, can also occur at in person meetings. For this reason, companies, especially large companies have contingency plans in place for technology issues and mitigate the risk of technology issues through numerous rehearsals and highly detailed contingency planning. The need for these plans is not new. A member consulted for this Submission recalled an occasion when a power blackout at the meeting venue necessitated adjournment of an AGM.

Our members also note that the technology used for online meetings has evolved rapidly over the last five years and will continue to evolve with improvements to the platforms each meeting season. It is likely that the technology will evolve rapidly over the next few years.

One technological issue which is outside companies' and technology providers' control is the technology used to connect to an online meeting. To the extent possible companies and share registries try to ensure that online meeting participants have access to a Help Desk, FAQs and meeting guides to assist them in resolving technological issues.

6. Have you observed any significant differences in governance, shareholder participation, meeting conduct or quality between companies that have listed after the 2022 amendments and those that listed prior to the amendments?

Our members consulted for this Submission report that of the small number of companies that have listed since the 2022 amendments and a number of companies which listed immediately prior to the 2022 amendments anticipated these changes and included the relevant provisions in their constitutions. In their experience, there have been no significant differences in governance, shareholder participation, meeting conduct or quality between companies' between these companies and those without these provisions.

7. How have the mandatory poll voting requirements affected the conduct of meetings and determining the opinion of members?

Our members report that the mandatory poll requirements are operating as intended and that they have not affected the conduct of meetings or determining the opinion of shareholders. Some companies use an independent scrutineer at their AGMs.

²⁰ See [States that Allow and Prohibit Virtual Shareholder Meetings](#), Broadridge, accessed 15 July 2024.

8. Have there been any issues with submitting or complying with requests for independent reports on polls?

Only one member consulted for this Submission has experience with a request for an independent report on a poll and advised that the report was requested and supplied without any issues.

9. Are there lessons that Australia could take from other jurisdictions' experiences with online or hybrid members' meetings?

See our response to Question 4 above.

10. How have the amendments affected the effective operation of directors' meetings?

Our members universally report that the amendments have not impacted the effective operation of directors' meetings and have been particularly helpful where boards have overseas resident directors. In fact, it promotes the ability to have directors resident in countries in which the company operates. They have however commented that the 'optimal' meeting experience is when all directors attend in person or when all directors attend online. Many companies have moved to alternating the formats for board meetings.

Our members fully support retaining flexibility for directors to join board meetings using technology as required, including, for example, where a director is unable to attend an in person meeting due to illness or foreign residence. Our members consider the amendments are working well and there is no need for change.

Consultation questions on the treatment of documents

11. What, if any, issues have been experienced with the giving and sending or receipt of electronic meeting-related documents? How could these be addressed?

Our members are involved in the giving and sending of electronic meeting-related documents. For many companies, particularly large, listed companies this is typically carried out on their behalf by share registries. They report very few issues with giving and sending electronic meeting related documents. They consider that the amendments were a long-overdue modernisation of the notice provisions of the Corporations Act, subject to shareholders having the right to opt in to paper-based communications. Our Survey indicates that the majority of issuer participants sent hard copy proxy/voting forms or notices of access as part of the AGM materials for their 2023 AGM. Some companies send a hard copy proxy form with a notice of access to encourage those shareholders who have not opted in to electronic communications to vote.

Anecdotal evidence from our members indicates they received few requests for hard copy notices of meeting/proxy forms.

Our members note that during the COVID-19 pandemic Australia Post changed its delivery schedules and no longer delivers mail each day. This may have impacted shareholders who elect to receive hard copy meeting materials, particularly those who use Australia Post to both receive and return meeting materials.

The amendments also assisted with the long-standing issue of 'lost shareholders' where companies were required to send hard copy materials where a shareholder had not made an election or where it did not have an email address or a current mailing address for a shareholder. Some members report that this has reduced their hard copy mail outs and the associated costs. The quantum of these savings depends on the company concerned and their shareholder base.²¹

²¹ See Governance Institute's [submission](#) *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments* 16 July 2021 at page 9.

12. What, if any, issues have there been with the process for making elections or with entities following the elections of members regarding meeting-related documents? If yes, how could this be improved?

For many companies, particularly large, listed companies shareholder elections are typically managed on their behalf by share registries. Our members report they have not received reports of issues with the process for shareholders making elections or following elections in relation to meeting-related documents. They consider the process is working well and is a significant improvement to the situation prior to the amendments.

Our members consider there is still an opportunity to further streamline these processes, particularly where shareholders have not made an election about the form of communications, by moving to an opt in process similar to that for annual reports, which has been operating effectively since first introduced in 2012. The Corporations Act could be amended to deem companies' shareholders who fail to make an election to have received the materials, subject to the company making the meeting materials: available in the public domain and accessible, using a universal or near universal channel of communication, and issuing an ASX announcement, if listed, noting that making the meeting materials available on the company's website meets the current definition of a near-universal channel.

We have not received any feedback from members in relation to these processes at companies which manage their own registers.

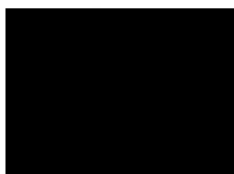
13. What, if any, issues have been experienced with the electronic signing of documents? If yes, how could these be improved?

Our members universally report that electronic execution of documents is working well. They had advocated for these long overdue reforms for many years. As was anticipated, the ability to electronically sign documents has significantly reduced the burden on business. Members involved in a high volume of execution of leases continue to report difficulties with the acceptance by state land and other registries of documents executed electronically and some financial institutions continuing to require 'wet ink' signatures for financing large sums. The previous Government announced prioritisation of modernising document execution across the Commonwealth.²² Our members continue to advocate modernising and harmonising document execution across the Commonwealth should be a key priority for Government.

While outside the scope of this consultation our members report that a number of ASIC forms must still be lodged in hard copy requiring companies to mail signed forms to ASIC for processing. Our members report significant levels of frustration associated with trying to ensure forms are received by ASIC within the required timeframes.

If you have any questions in connection with this Submission, please contact me or Catherine Maxwell, General Manager, Policy and Advocacy.

Yours faithfully,



Megan Motto
CEO

²² See the Joint Media Release the Attorney General and the Assistant Minister to the Prime Minister and Cabinet 11 June 2021.

AGM 2023 - Survey results

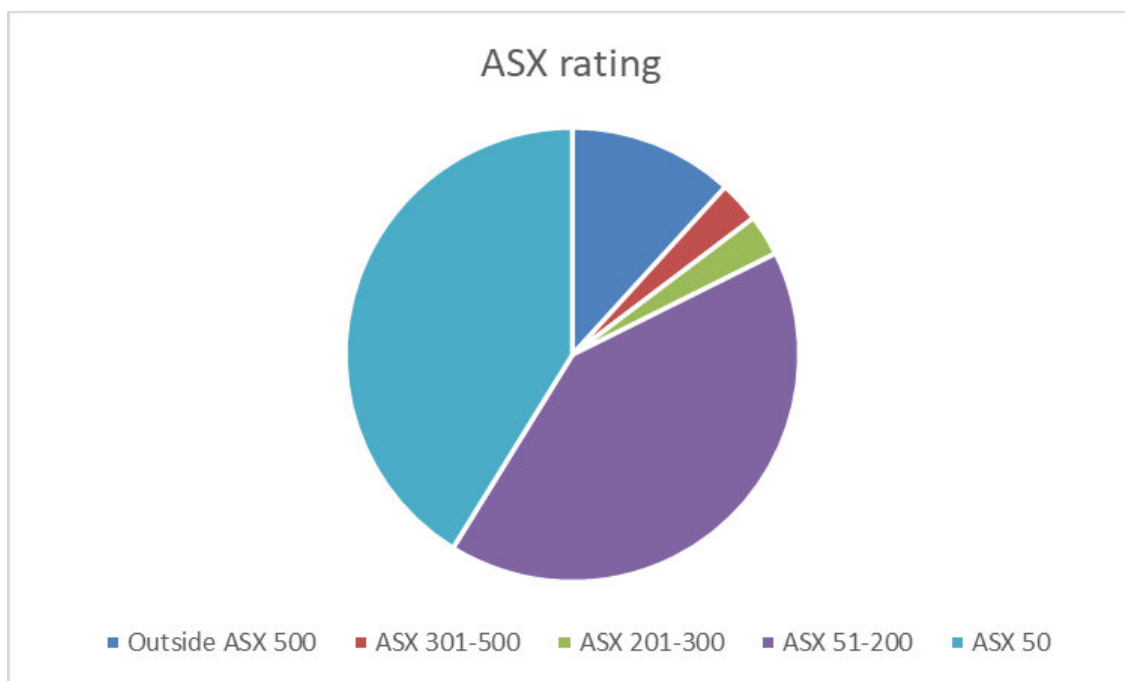
Purpose of the survey

Governance Institute has carried out the AGM 2023 survey to assist it understand the impact of the 2022 amendments to the Corporations Act to permit companies and registered schemes to use technology to hold Annual General Meetings (AGMs) and to communicate electronically with members. These changes were introduced on a temporary basis during the COVID-19 pandemic and were made permanent in early 2022. You can find more information about these changes here. The changes also included a requirement for an independent review within two years of the commencement of the changes.

Governance Institute will use the results of this survey to inform its advocacy and provide material for the guides and other information it provides to members. The survey is designed to be completed by listed and unlisted companies.

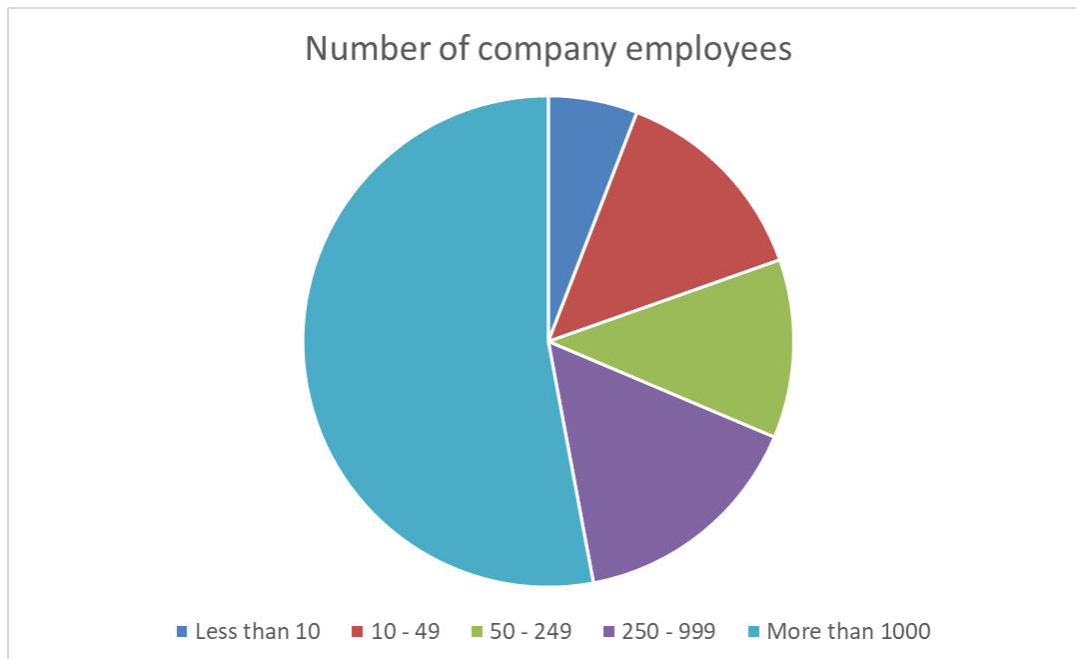
Survey results

1. ASX listing and company type



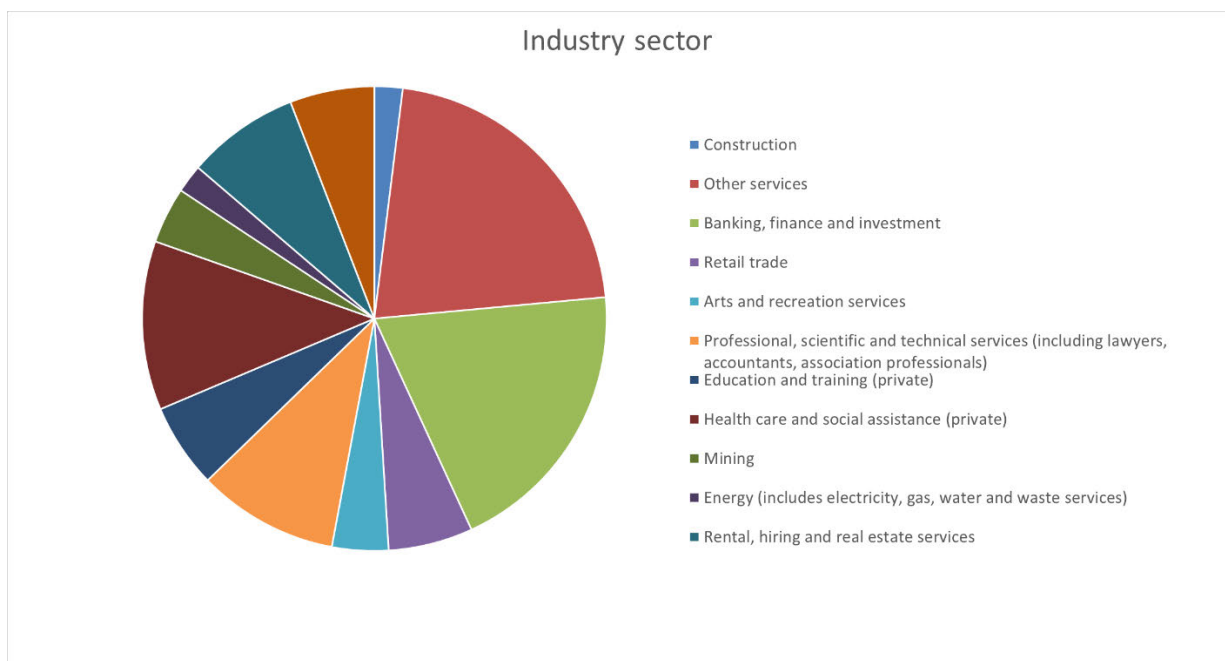
Most respondents were from large, listed companies within the ASX 50 and ASX 51-200. For those companies that were unlisted, the majority stated that they were charities, not-for-profit, or a company limited by guarantee.

2. Number of company employees



Most respondents represented were from companies with employees of more than 1000, followed by those firms with 250-999 employees. The least represented group were those from companies with less than 10 employees.

3. Industry sector



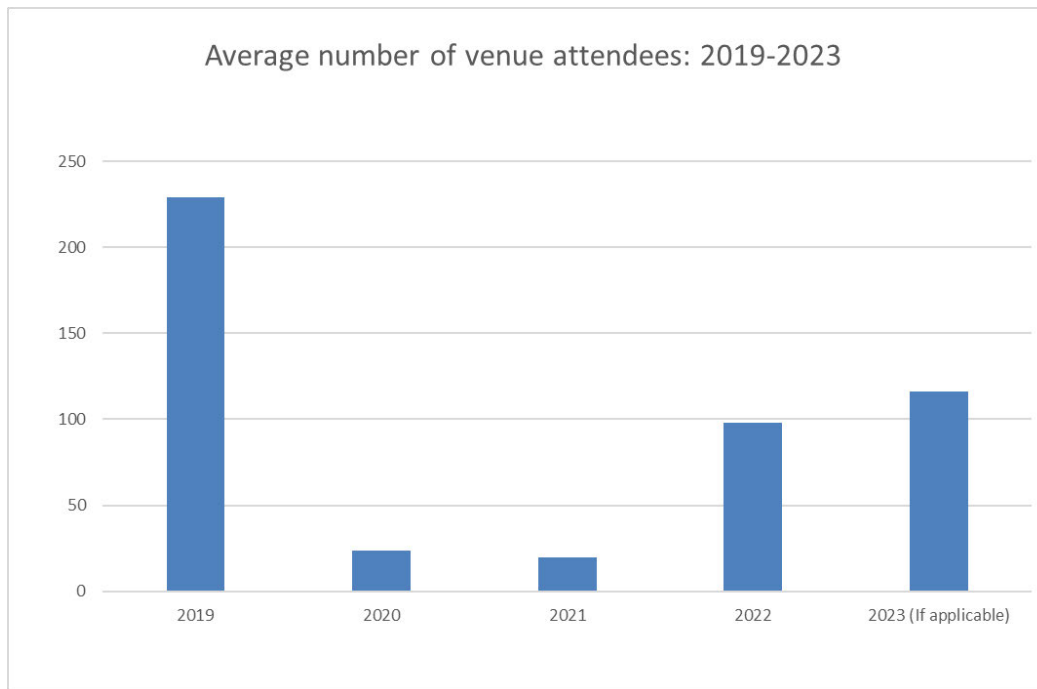
There was a very broad mix of industry sectors represented in the survey. The leading sector represented was "other services", "banking, finance and investment" and "professional, scientific and technical services (including lawyers, accountants and association professionals)". "Other services" was represented by property, real estate and technology and software.

4. Meeting format 2019 - 2023

2019 - Meeting Format	Percentage - Meeting Format
Physical only	71.5%
Physical only plus webcast	21.5%
Hybrid	7%
Online only	0%
2020 - Meeting Format	
Online only	69%
Hybrid	15.5%
Physical only	15.5%
Physical only plus webcast	0%
2021 - Meeting Format	
Online only	78.5%
Physical only	14%
Hybrid	7.5%
Physical only plus webcast	0%
2022 - Meeting Format	
Hybrid	53%
Online only	20%
Physical only plus webcast	15.5%
Physical only	15.5%
2023 - Meeting Format	
Hybrid	60%
Physical only	20%
Online only	13%
Physical only plus webcast	7%

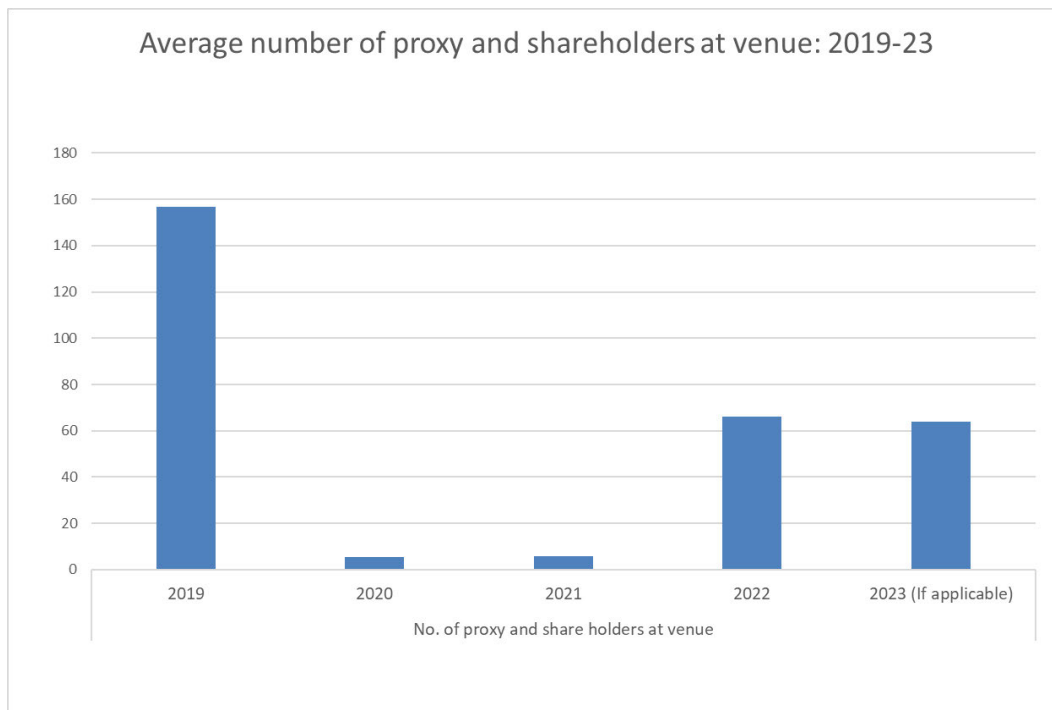
Physical only meeting formats were the majority meeting format type in 2019 but has since become a minority meeting format with only 20% of respondents stating that this was the meeting type used at their most recent AGM. The online only meeting format peaked during COVID-19 and has since been replaced with hybrid meeting formats being the majority meeting format since 2022.

5. Total venue attendees 2019 - 2023



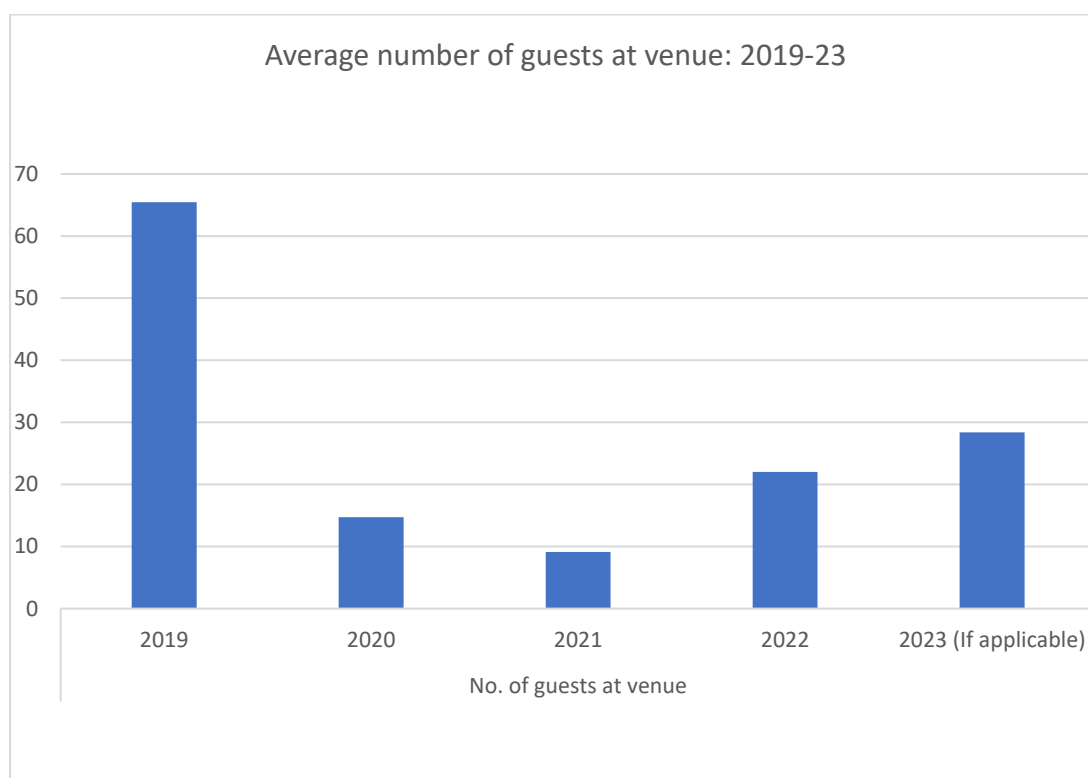
Total venue attendees declined sharply over the COVID-19 pandemic peak, and have since recovered to about half of 2019 levels.

6. Proxy and shareholders at venue 2019 - 2023



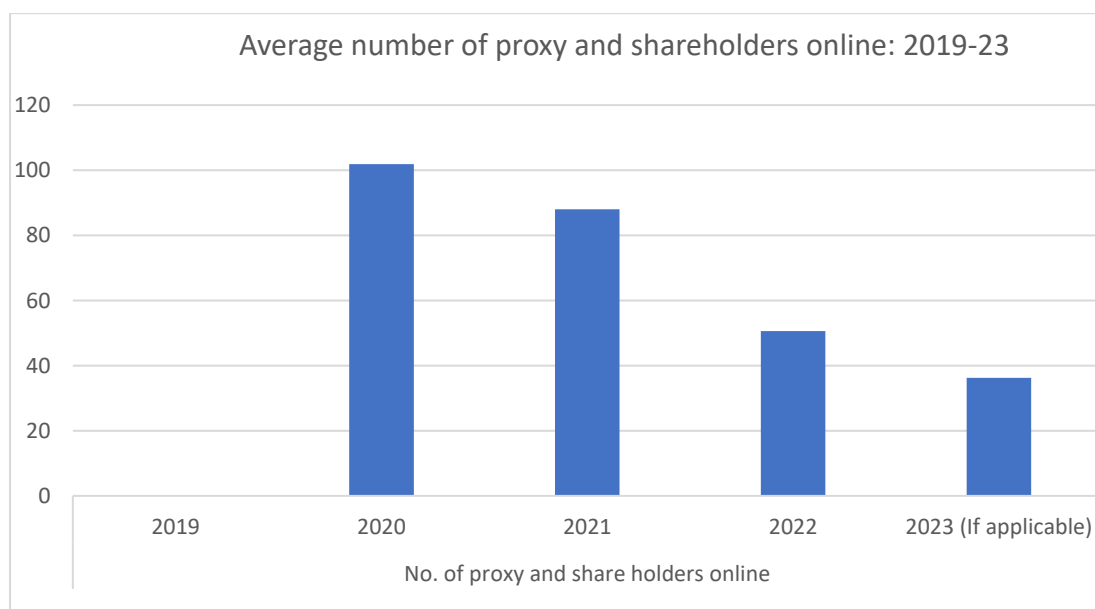
The average number of proxy and shareholders at venues dramatically reduced over the COVID-19 pandemic and have only recovered to about a third of 2019 numbers.

7. Guests at venue 2019 - 2023



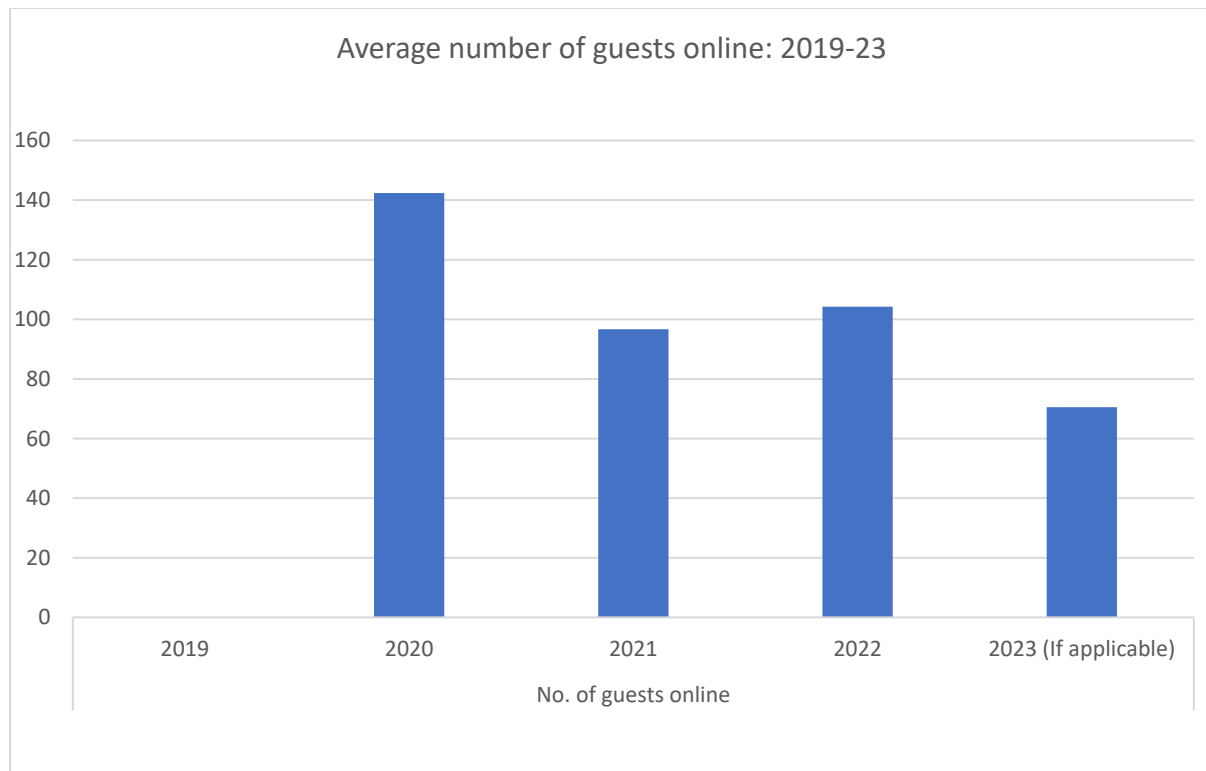
A similar scenario is in play with the number of guests at the AGM venue having dramatically decreased over the COVID-19 pandemic and only marginally recovering during the most recent AGM season.

8. Proxies and shareholders online 2019 - 2023



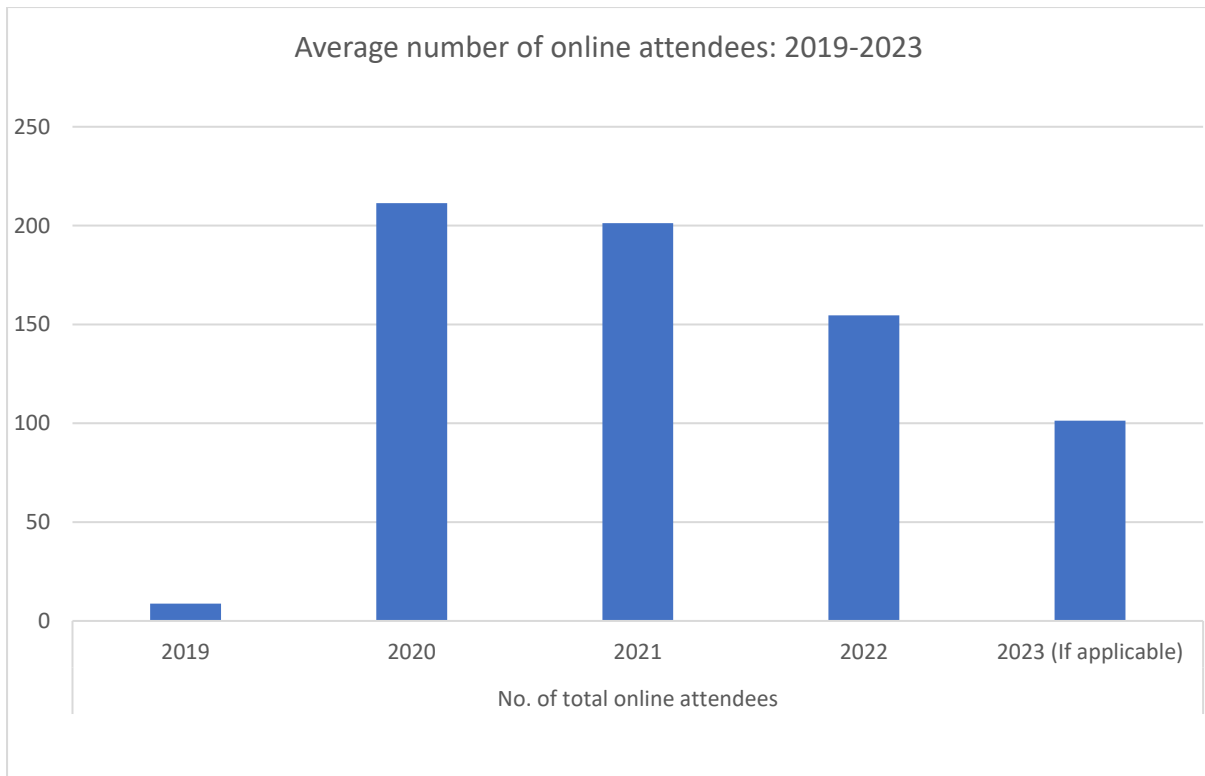
There were no proxy or shareholders online in 2019. The average number of proxy and shareholders online peaked during the COVID-19 pandemic. The numbers since have reduced but remain part of the AGM process.

9. Guests online 2019 - 2023



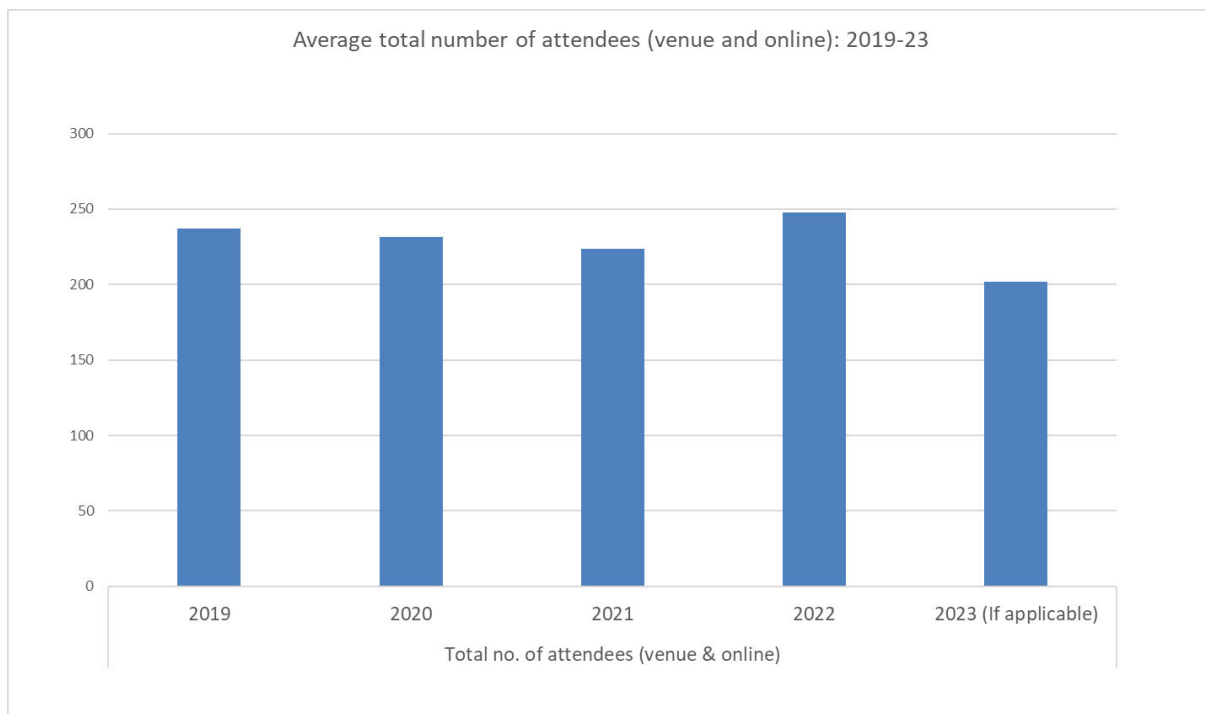
Similarly, no guests were present online in 2019, numbers online peaked during the COVID-19 pandemic and this remained a popular way of attending the AGM in subsequent years, although numbers are lower than at the height of the pandemic.

10. Total online attendees 2019 - 2023



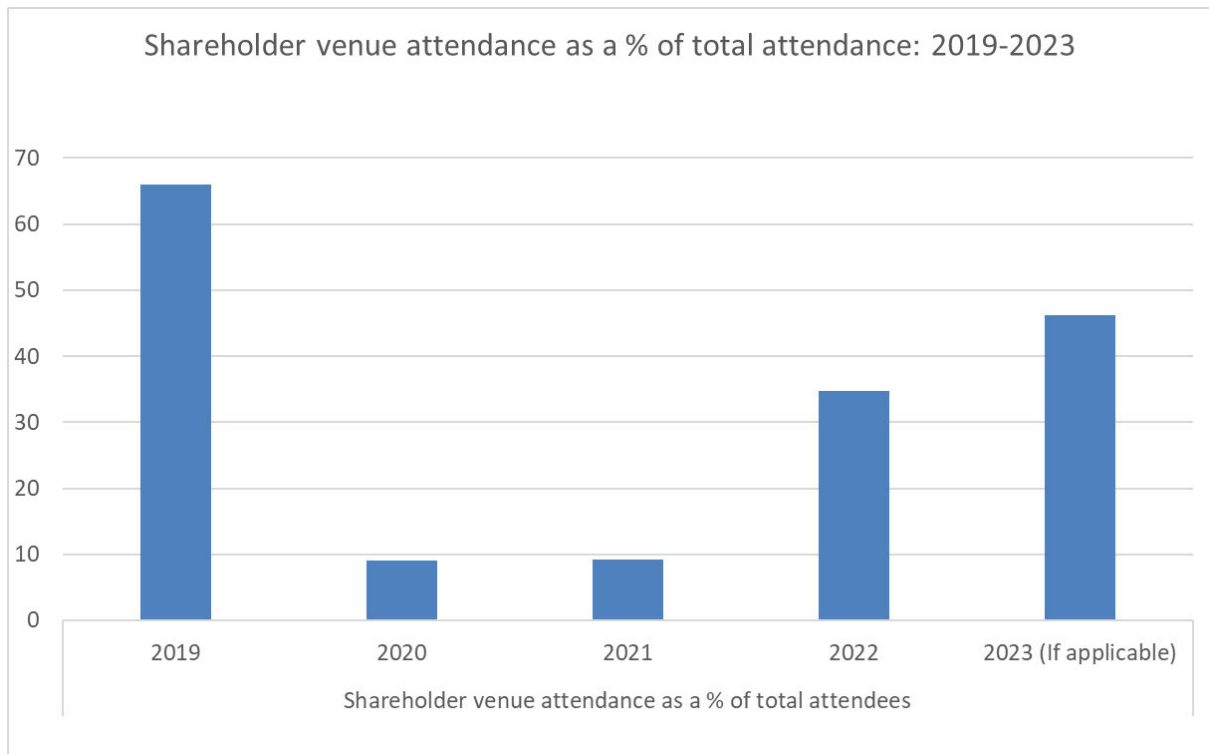
The average number of online attendees peaked during the COVID-19 pandemic and has since reduced by approximately half to remain much higher than 2019 levels.

11. Total online and venue 2019 - 2023



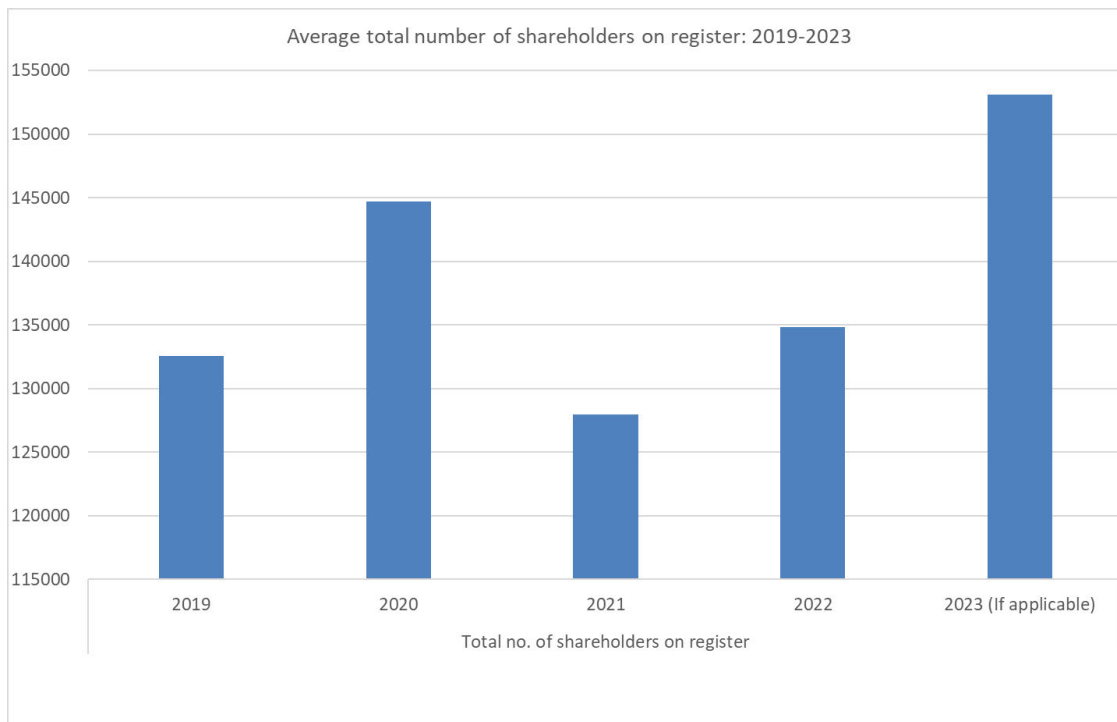
In 2023 the average total number of attendees across venues and online remains slightly lower but consistent with the previous 4-year average.

12. Shareholder attendance at venue percentage of total



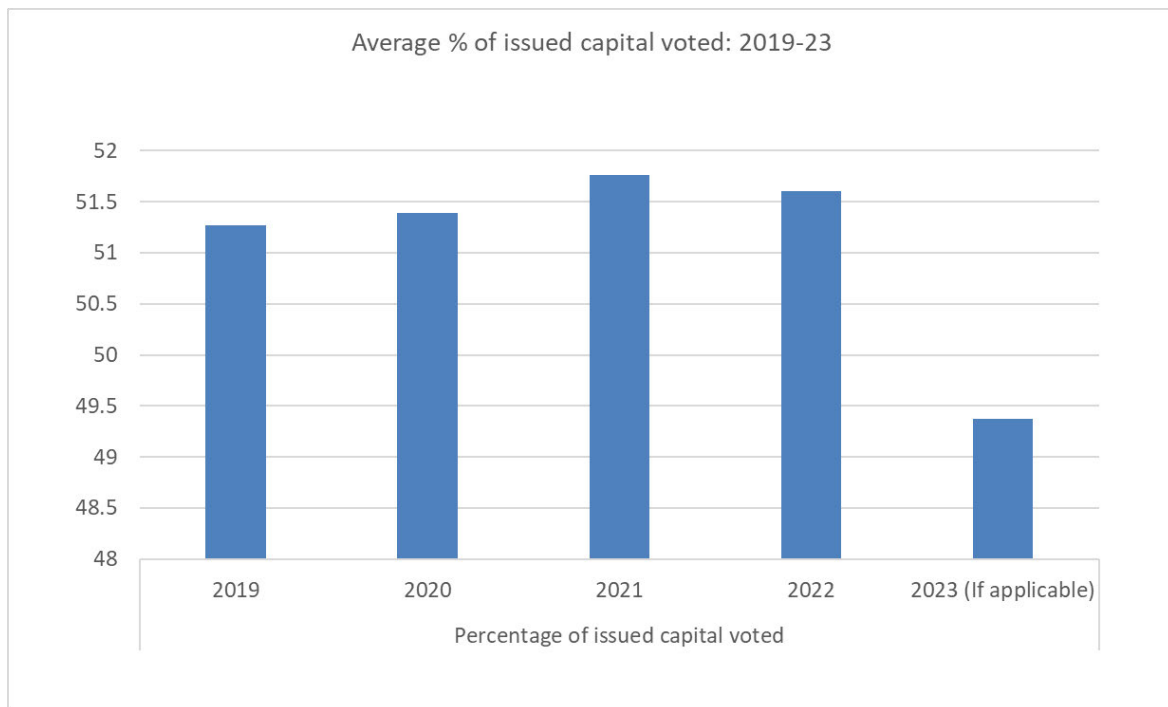
The number of shareholders attending at venues as a percentage of total attendees has increased since reducing dramatically during the COVID-19 pandemic. Despite its resurgence it has not reached pre-pandemic levels.

13. Total shareholders on register 2019 - 2023



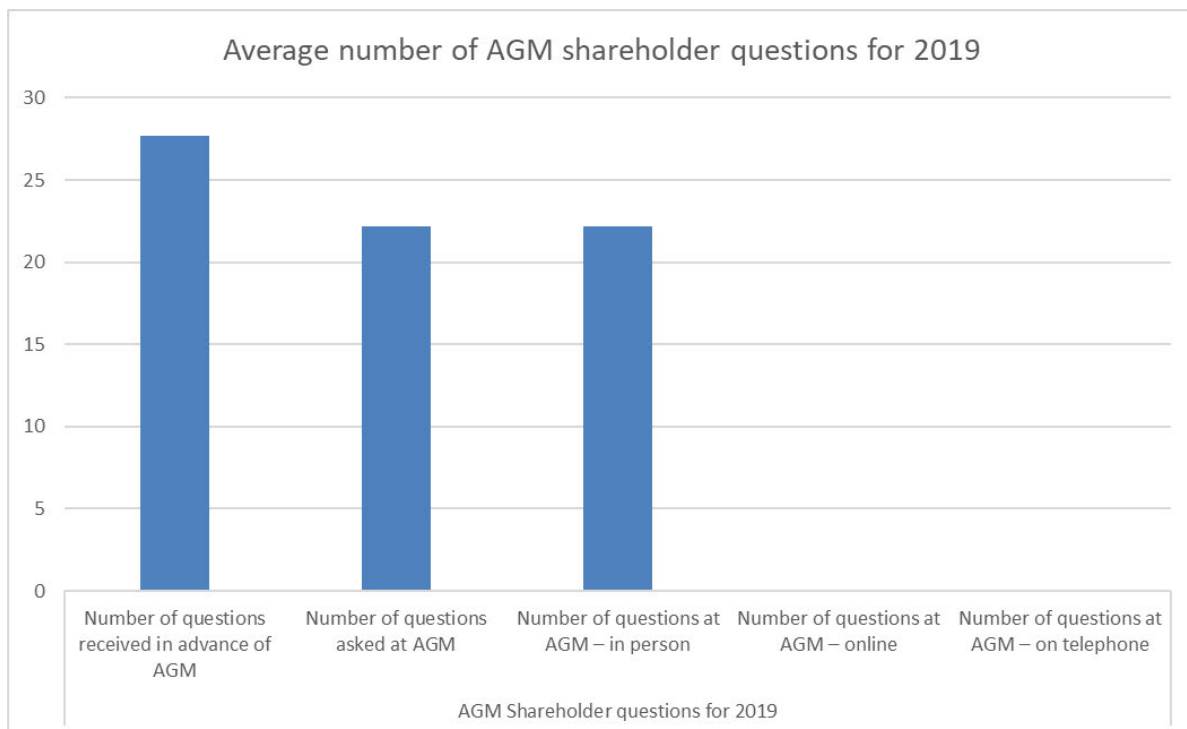
The total number of shareholders on register has oscillated between 2019 to 2023 with that number having increased since 2019 and the lowest number in 2021.

14. Percentage of issued capital voting 2019 - 2023



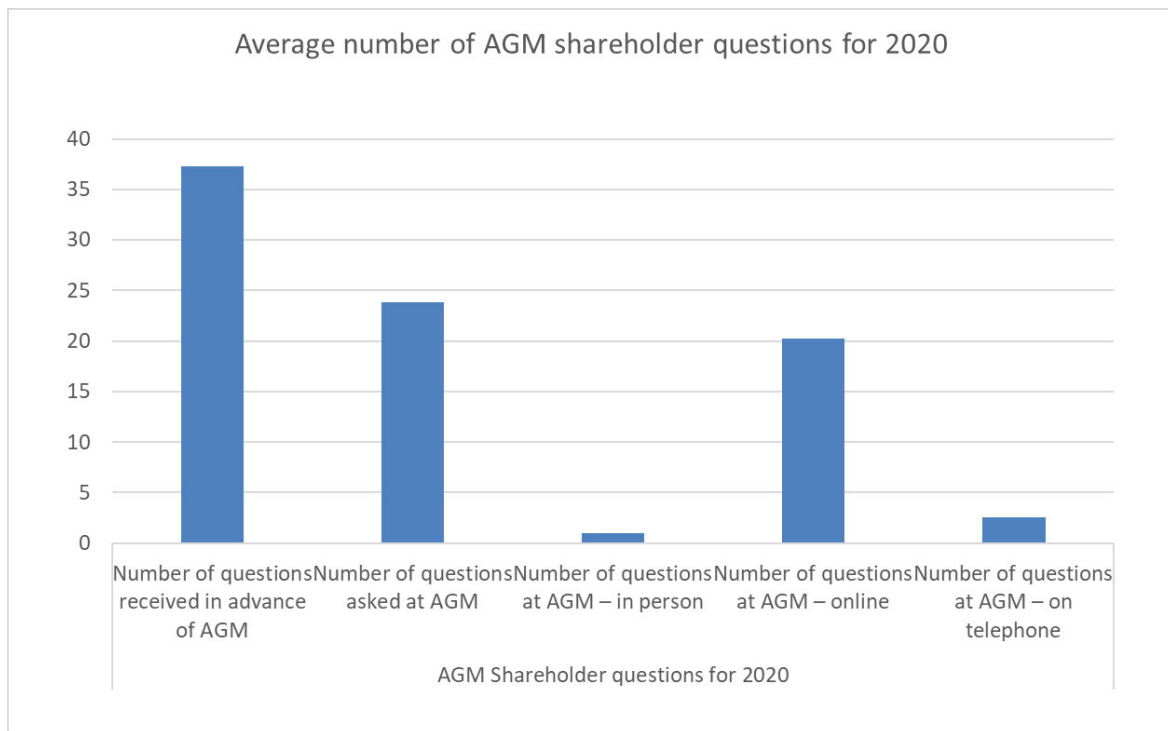
The percentage of issued capital voting has decreased slightly from its peak in 2021 at 51.7 per cent to 49.4 per cent in 2023.

15. Shareholder questions - 2019



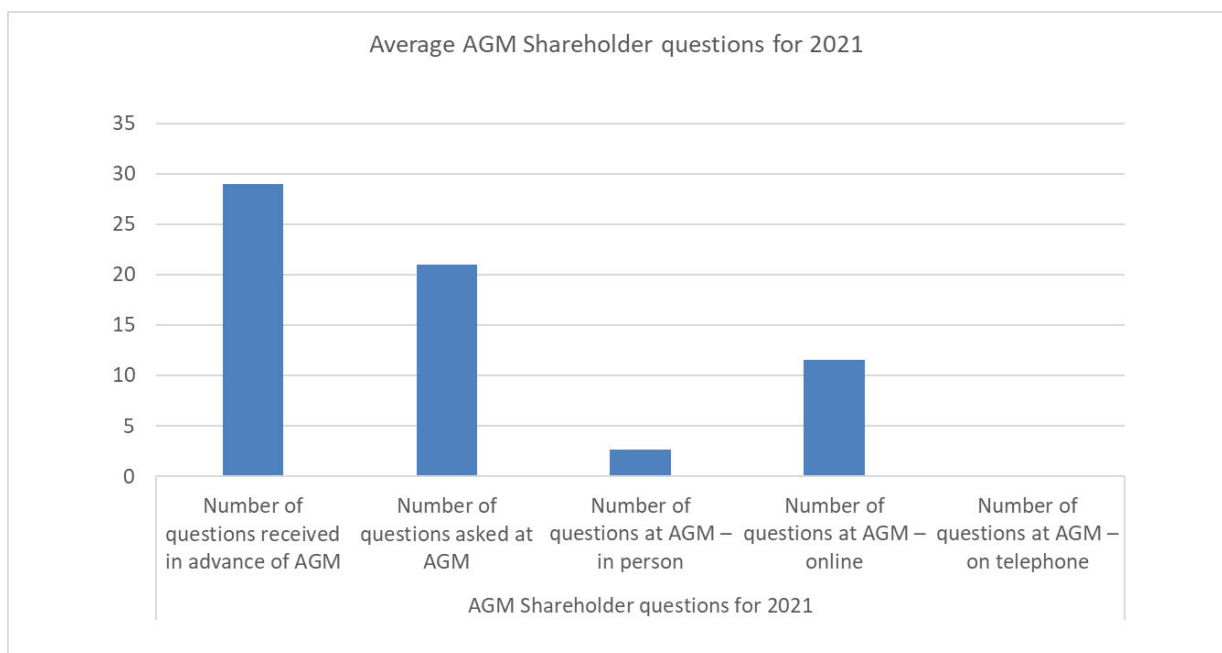
In 2019 the majority of questions were received in advance of AGMs followed by questions in person. There were no questions asked online or via phone in 2019.

16. Shareholder questions - 2020



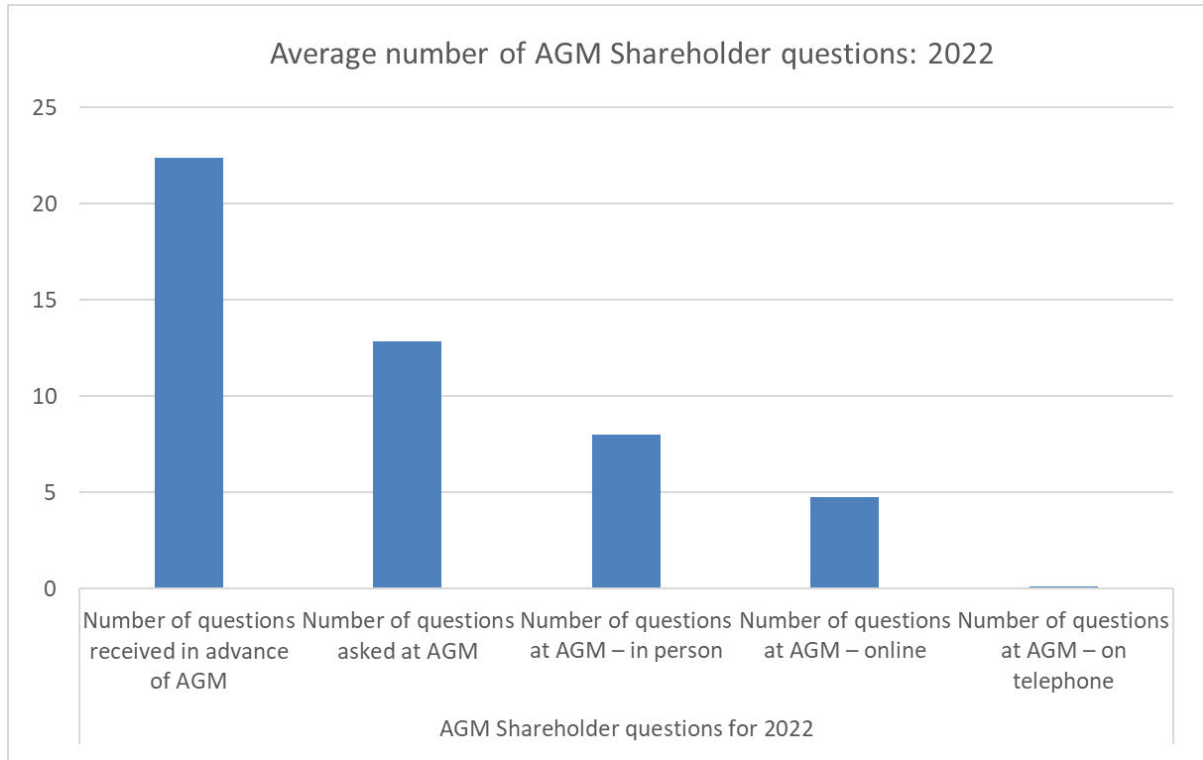
The majority of questions asked were received in advance of the AGM, however in 2020, the number of questions asked at online was comparable to the number of questions asked at the AGM.

17. Shareholder questions - 2021



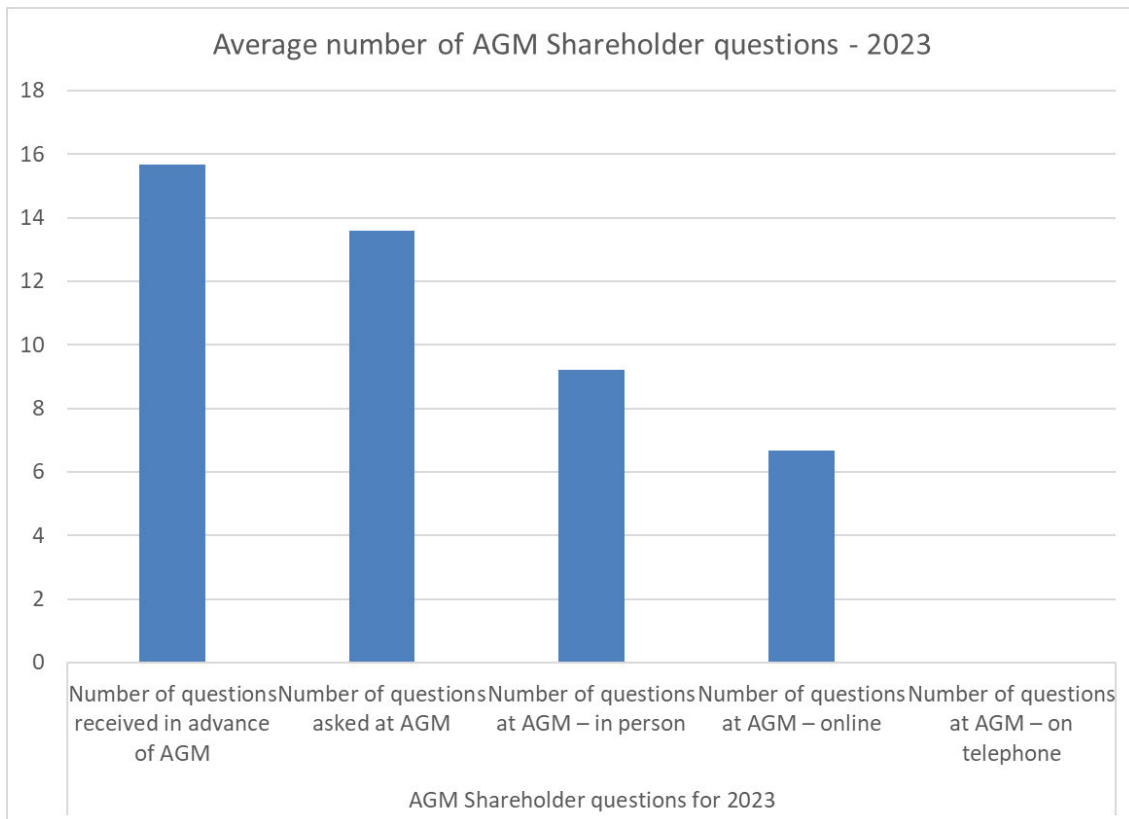
In 2021 sending questions in advance of the AGM remained the most popular method of asking questions and the number of questions asked online reduced compared to the number of questions asked at the AGM.

18. Shareholder questions - 2022



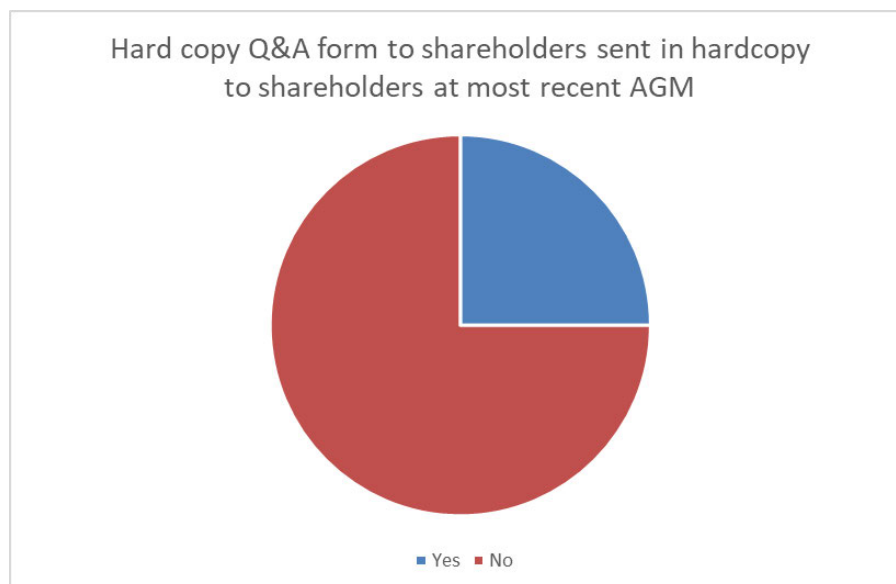
Sending questions in advance of the AGM remained the most popular method of asking questions, however the number of questions asked in person at the AGM exceeded the number of questions asked online in 2022.

19. Shareholder questions - 2023



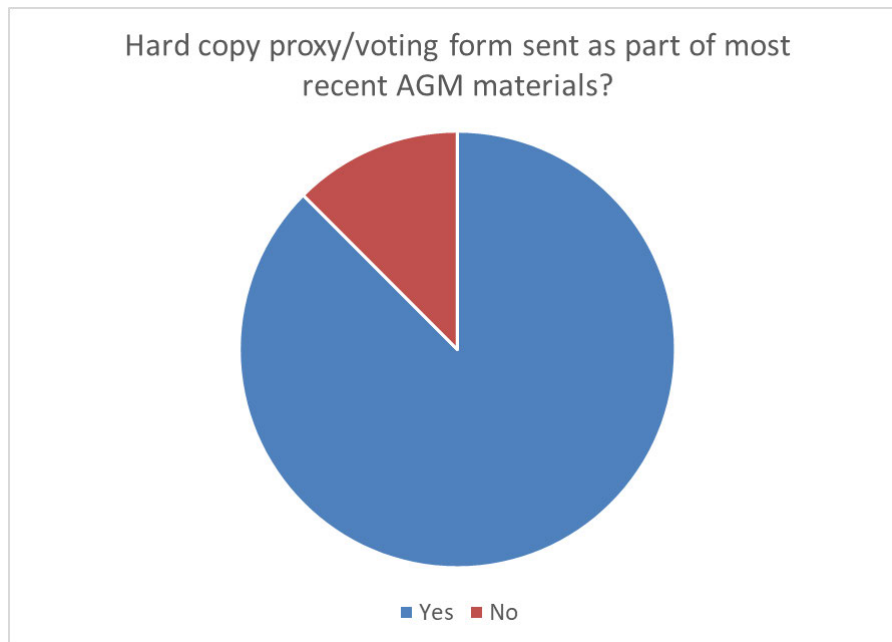
The number of questions asked online increased slightly on 2022 levels. While questions received in advance of the AGM remained the most popular method, the number of questions asked at the AGM was significantly more than preceding years.

20. Hard copy Q&A form



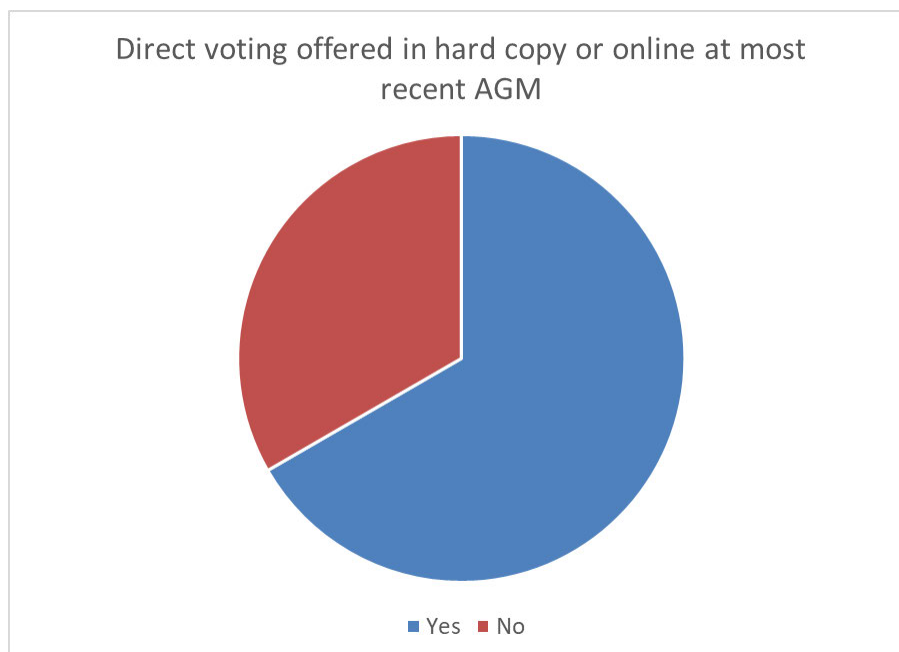
The vast majority stated that they did not send hard copy Q&A forms to shareholders at their most recent AGM.

21. Hard copy proxy/voting form



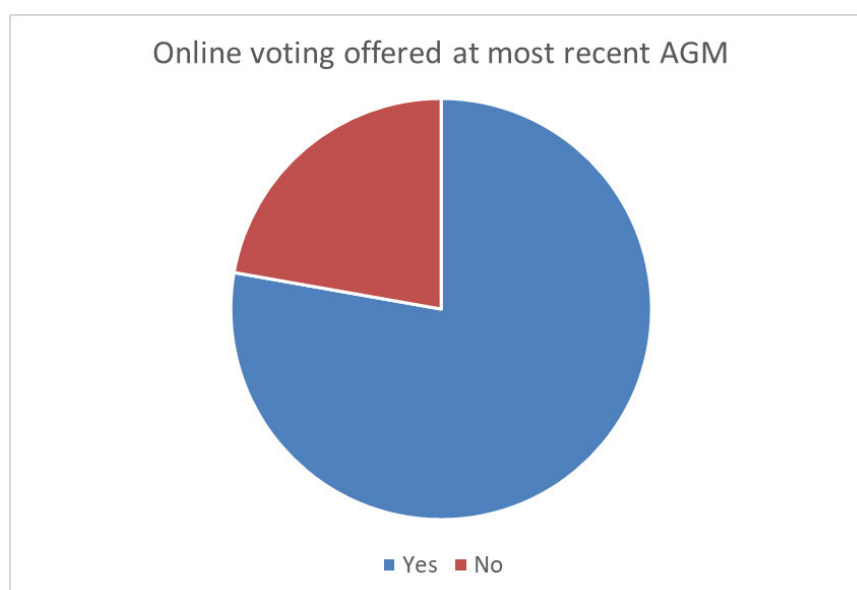
On the other hand, the majority stated that they had sent hard copy proxy/voting forms as part of the AGM materials at their most recent AGM.

22. Direct voting hard copy



Two thirds of respondents replied that they had offered direct voting in hard copy or online formats at their most recent AGM.

23. Online voting



Most respondents replied that they offered online voting at their most recent AGM.

Conclusions

The Survey indicates that:

- the meeting format chosen by companies for AGMs clearly indicates the impact of COVID-19 and restrictions on physical gatherings between 2020 and 2022
- a number respondents offer the hybrid format for AGMs at their most recent (2023) AGM but the physical format also increased in popularity
- despite the lack of restrictions on physical gatherings the number of meeting attendees attending in person has not returned to pre-COVID levels despite the increased number of shareholders on company registers
- the results indicate that while a small number of attendees used the telephone to ask questions in 2020 there was almost no use of telephones for asking questions in subsequent years
- the current flexibility of meeting format allows companies to offer the format that suits their needs and the needs of their shareholders and companies and shareholders are taking advantage of this flexibility
- while the number of questions asked online at AGMs has increased in line with the increased availability of technology at AGMs, sending questions in advance of the AGM continues to be the most popular way of asking questions at the AGM
- while most companies surveyed send hard copy proxy/voting forms, very few send hard copy Q&A forms.

Attachment B – Costs

Company A – ASX 50 Company*

Year	Number of shareholders	AGM Print and Postage	Print and Postage cost divided by number of holders (average cost per holder)	Notes
2018	274,530	\$334,076	\$1.22	Physical (pre-COVID)
2019	264,264	\$293,670	\$1.11	Physical (pre-COVID)
2020	259,245	\$171,637	\$0.66	Virtual Notice of access letter was sent in lieu of hard copy Notice of Meeting (NoM). Hard copy proxy form was not posted
2021	242,065	\$191,170	\$0.79	Virtual Notice of access letter was sent in lieu of hard copy NoM. Hard copy proxy form was posted
2022	255,208	\$165,445 (\$51,059 print and \$114,385 post)	\$0.65	Hybrid Notice of access letter was sent in lieu of hard copy NoM. Hard copy proxy form was posted
2023	260,127	\$177,850 (\$57,186 print and \$120,664 post)	\$0.68	Hybrid Notice of access letter was sent in lieu of hard copy NoM. Hard copy proxy form was posted

* Printing and postage costs have decreased compared to pre-COVID through the ability to provide a notice of access letter in lieu of a hard copy NoM and have then remained relatively consistent.

Company B – ASX 200 company

The AGM costs have risen by approximately \$15,000 or 33 per cent because the company holds a hybrid meeting. The constitution does not allow virtual only meetings so the so the virtual component has added costs to the pre-COVID physical-only AGM.

The company has been able to save approximately \$22,000 per annum by not printing Notices of Meeting, approximately around 80,000 copies. There are no savings on postage as the company sends the AGM materials with the dividend statements and Annual Reports. Australia Post costs have risen significantly since COVID so the \$22,000 saved on not printing Notices of Meeting has been eroded and is consumed by postage costs. The cost of producing, printing and mailing Annual Reports is now very significant, and will grow as more regulation comes into force, for example climate related financial disclosure reports.

The other consideration is that the company is wasting less paper by not printing as many Notices of Meeting – 80,000 copies of Notices of Meetings at six pages, double sided, saves 480,000 sheets of A4 equivalent paper per annum.