



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:BMslh240724

24 July 2024

Meetings and Documents Review Panel
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)

Dear Chair,

Consultation Paper - Statutory Review of the Meetings and Documents Amendments

Thank you for the opportunity to provide feedback on the Consultation Paper, *Statutory Review of the Meetings and Documents Amendments*. The Law Society's Business Law Committee contributed to this submission.

Our feedback on relevant questions in the Paper is provided in the attached comments table.

Any questions in relation to this letter should be directed to Sonja Hewison, Policy Lawyer, at [REDACTED] or on [REDACTED]

Yours sincerely,



Brett McGrath
President

Encl.

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Consultation Paper - Statutory Review of the Meetings and Documents Amendments

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Law Society of NSW feedback



No.	Questions for consideration	Law Society comments
Consultation questions on meetings		
1	<p>How has the experience of running company or registered scheme members' meetings changed since the amendments?</p> <p>- What have been the effects of the amendments on the costs of holding AGMs or other meetings?</p>	<p>The Law Society is supportive of the amendments to the <i>Corporations Act 2001</i> made by the <i>Corporations Amendment (Meetings and Documents) Act 2022</i> (the 2022 Act). In our view, the amendments introduced sensible and balanced measures to ensure inclusive engagement, and that accountability is upheld in meeting environments where technology is utilised. They have also appropriately provided flexibility to companies and schemes to implement the most suitable format for the conduct of their meetings.</p> <p>In our members' experience, the hybrid format is generally the most expensive, given the additional resources required for dual-channel meetings. Specialised services that may incur costs in excess of those for traditional event production services include:</p> <ul style="list-style-type: none">• setting up a virtual platform;• graphics and design;• technical support (specialised software and equipment); and• governance resources to ensure compliance. <p>However, we suggest that the growing number of providers/products offering hybrid meeting solutions, together with rapidly evolving improvements in technology, are likely to drive cost reductions.</p>
2	<p>How have the amendments affected members' participation in meetings and has this affected the exercise of shareholder rights or corporate governance?</p>	<p>We consider that the amendments have provided the following positive outcomes in connection with shareholder rights and corporate governance:</p> <ul style="list-style-type: none">• enhanced participation, engagement and transparency, by allowing more members to participate in real-time,• increased accessibility and inclusivity, with reduced travel and accommodation time and cost burdens, particularly for those members who live in remote areas or abroad, have mobility issues in connection with age or disability, or who have carer responsibilities, and• alignment with broader ESG¹ goals through a reduction in carbon footprint and waste. <p>However, we also note that participation may occasionally be hampered by technological</p>

¹ ESG stands for environmental, social and governance and refers to a set of standards used to measure an organisation's environmental and social impact.

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		<p>challenges. For example, some of our members have suggested that question management in the online environment is more difficult than in physical meetings, due to limited visibility of participants waiting in the virtual queue and lack of clarity as to when the chairperson may be ending questions on a particular topic.</p>
3	<p>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?</p>	<p>The Law Society suggests improvements could be made through the introduction of best practice guidance, potentially prescribed by regulation, to maximise engagement and build confidence in the online and hybrid meeting environment. In line with existing statements and guiding principles (see further under No. 9 below) we suggest the following minimum requirements are adopted:</p> <ul style="list-style-type: none">• implementation of systems to ensure reliability of technology and support for key meeting components, such as question management, presentation of shareholder proposals, and security;• use of technology that best replicates the in-person experience, for example, it is suggested video should be favoured over audio-only, to allow participants to view the conduct of the meeting by the board and management in real-time (where audio-only may be proposed, such as in the event of technology failure, then a robust question management process should be in place); and• provision of security infrastructure to ensure protection of privacy and sensitive information.
4	<p>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?</p>	<p>In our members' experience, the preference is for hybrid or in-person meetings. The Annual General Meeting (AGM) is an important engagement opportunity for shareholders to meet the board and management, particularly with respect to contentious issues. Apart from limiting direct interaction opportunities, the wholly online meeting environment also potentially constrains the ability to ask unmoderated questions, and to view materials presented at the meeting. We note that, in 2023, there were very few ASX entities that sought to amend their constitutions to permit wholly virtual meetings, with some resolutions subsequently withdrawn in response to stakeholder feedback.²</p>

² Newnham E, Hill J, Muraca J, Nicholson D, Dinh H & Su S, King & Wood Mallesons, *Deep Dive into ASX200 AGMs in 2023*, July 2024, 7 [pdf] <https://www.kwm.com/au/en/insights/latest-thinking/publication/deep-dive-into-asx200-agms-in-2023.html>

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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?	<p>Our members have described technological issues generally falling into the following categories, although relatively low in occurrence:</p> <ul style="list-style-type: none">• connectivity problems;• difficulties with viewing questions submitted online, or waiting in the virtual queue to be answered by the board; and• poor audio, including sound disbalance and background noise. <p>These issues were most commonly resolved by providing members with options to dial in by phone or use a chat function to ask questions or make comments. We reiterate our suggestion at No. 3 above for the adoption of best practice guidance. This might include actions to be taken to ensure democratic and equitable access for all members and the validity of resolutions in the event of technological failures. We also note these issues are evolving with advances in technology.</p>
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 have not observed any significant differences.
7	How have the mandatory poll voting requirements affected the conduct of meetings and determining the opinion of members?	Our members are not aware of the amendments affecting the conduct of meetings or in determining the opinion of members.
8	Have there been any issues with submitting or complying with requests for independent reports on polls?	Our members are not aware of any issues.
9	Are there lessons that Australia could take from other jurisdictions' experiences with online or hybrid members' meetings?	We note various international reports, surveys and studies provide substantial comparative data in relation to overseas policy and legal frameworks for online and hybrid company meetings, and

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		<p>it appears there are high levels of convergence between Australia and other jurisdictions.³ Specifically, the governing legislation in most of the subject jurisdictions permits the conduct of meetings using digital tools, but with constraints for wholly online meetings (such as prior constitutional approval). These regimes also require that reasonable opportunities for member participation are maintained irrespective of the meeting format.⁴</p> <p>Two recurring concerns revealed in the data, and which reflect our members' experience, as noted above, are:</p> <ul style="list-style-type: none">• shareholder question management in the virtual space, and• technological disruptions.⁵ <p>A number of overseas jurisdictions have issued guidance specifically addressing these issues by including actions that may be taken to safeguard meeting processes against reduced access and participation, and the potential invalidity of resolutions.⁶ In our view, a best practice guidance authorised by government will build trust in the conduct of meetings that use online components, and will maximise engagement. The guidance may be regularly reviewed and updated as new technologies emerge.</p>
10	How have the amendments affected the effective operation of directors' meetings?	In our members' experience, the amendments have enabled directors' meetings to be convened at short notice and have facilitated an increase in the use of resolutions by circular. This is an improvement to corporate governance, as the amendments equip the board with strategic flexibility to respond quickly to practical issues and allow for speed in decision making, without compromising transparency in an increasingly complex and challenging regulatory environment.

³ See for example: The Informal Company Law Expert Group (ICLEG), *Report on virtual shareholder meetings and efficient shareholder communication*, August 2022, https://commission.europa.eu/system/files/2022-10/report_on_virtual_shareholder_meetings_and_efficient_shareholder_communication.pdf; and Organisation for Economic Cooperation and Development (OECD), *OECD Corporate Governance Factbook 2023*, <https://www.icgc.com.co/wp-content/uploads/2024/03/OECD-Corporate-Governance-Factbook.pdf>.

⁴ ICLEG, *ibid*, 11-14; OECD, *ibid* 77.

⁵ *Ibid*.

⁶ See for example: Financial Reporting Council, *Good Practice Guidance for Company Meetings*, https://media.frc.org.uk/documents/FRC_Good_Practice_Report.pdf; Companies Registry HK, *Guidance Note – Good Practice on Holding Virtual or Hybrid General Meetings*, https://www.cr.gov.hk/en/companies_ordinance/docs/Guide_GoodPracticeonHoldingVirtualorHybridGM-e.pdf.

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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?	<p>Some of our members have observed a proliferation of electronic notices for AGMs since the amendments were introduced. As a result, there is some risk that notices may not reach all the intended recipients due to the following factors:</p> <ul style="list-style-type: none">• many electronic notices are issued by third-party providers, so it is not always clear whether the notice is genuine;• electronic notices can be caught by spam filters; and• the rate of change in email addresses is high, compared with change in physical addresses.
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?	<p>Our members are not aware of any issues.</p>
13	What, if any, issues have been experienced with the electronic signing of documents? If yes, how could these be improved?	<p>In our member's experience, the variations in requirements for the electronic execution of documents across jurisdictions remains a significant and ongoing challenge.</p> <p>We note the work of the Department of Finance's Regulatory Reform Division toward modernising traditional paper-based and inefficient processes. The Law Society commends the establishment of the working group with Commonwealth and State representatives to consider options to harmonise processes for the electronic execution of statutory declarations and deeds across various jurisdictions.⁷ We would encourage the working group to consider other legal documents and instruments to be included in their scope of work.</p>

⁷ Attorney-General's Department, Australian Government, <https://www.ag.gov.au/legal-system/statutory-declarations/modernising-document-execution>.