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Meetings and Documents review
c/- Better Business Communications Unit
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Submission to the Statutory Review of the Meetings and Documents Amendments

The National Roads and Motorists' Association Limited (**NRMA**) welcomes the opportunity to make a submission to the Statutory Review of the Meetings and Documents Amendments. The NRMA wishes to make comment in relation to certain observations in respect of the new laws in response to questions 3 and 13 of the Consultation Paper.

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?

The NRMA considers the changes to the law relating to online and hybrid meetings to be generally positive.

The changes give companies the ability to hold a meeting physically, virtually or as a hybrid meeting (i.e. at a physical location and using virtual meeting technology), which enables companies to choose a method of meeting which is cost-effective and appropriate for their circumstances, while ensuring that members are able to effectively participate, regardless of the method of such participation.

However, NRMA notes that the drafting of certain of the new laws may act as a disincentive to companies to elect to hold a meeting as a hybrid meeting, rather than a physical-only or virtual-only meeting.

In particular, section 249S of the *Corporations Act 2001* (Cth) sets out a company's obligation to provide members who attend a meeting, as a whole, a reasonable opportunity to participate in the meeting. This is not a new concept. As indicated in the Consultation Paper, the Pre-amendments Corporation Act allowed a company or registered scheme to hold a meeting of its members at two or more venues using any technology that gives members as a whole a reasonable opportunity to participate.

However, section 249S(7)(b) provides that, if the meeting is held using virtual meeting technology (whether or not it is also held at one or more physical venues), that virtual meeting technology must allow the members who attend the meeting using that virtual meeting technology, as a whole, to exercise orally and in writing any rights of those members to ask questions and make comments. This drafting appears to impose an additional obligation on a company holding a meeting using virtual meeting technology – that is, in addition to the obligation to ensure that members as a whole have a reasonable opportunity to participate in the meeting (pursuant to subsection (1)), the company must also ensure that that the members who attend virtually have the ability to ask questions and make comments (pursuant to subsection (7)(b)).

Practically, this could mean that a company holding a hybrid meeting is forced to adjourn that meeting where the virtual meeting technology fails, even if there is only a very small number of members attending using that virtual meeting technology relative to those members present at the physical meeting, since subsection (7)(b) requires that the virtual meeting technology allows the members who attend using the virtual meeting technology, as a whole, to exercise orally and in writing any of rights of those members to ask questions and

make comments.[1] If the virtual component of the hybrid meeting fails, the requirement in subsection (7)(b) will seemingly not be met and the meeting will need to be adjourned, regardless of the proportion of attendees who are affected by the technology failure or whether the Chair has complied with their obligation under section 250S to allow a reasonable opportunity for members as a whole to ask questions or make comments at an AGM.

This same issue does not appear to arise in the context of meetings held only physically or virtually, since:

1. for a physical-only meeting, subsection (7)(b) will not apply; and
2. for a virtual-only meeting – section (7)(b) will apply, however, an assessment of whether the obligation is met will require assessing the ability of all attendees to ask questions and make comments (which is generally consistent with the overriding obligation in subsection (1) and is consistent with the obligation of the Chair to allow a reasonable opportunity for members as a whole to ask questions or make comments at an AGM under section 250S).

Applying the above practical example to a virtual-only meeting, it seems that a company holding a virtual-only meeting may not be required to adjourn that meeting where the virtual meeting technology fails, if such failure does not affect all attendees and the attendees as a whole have the ability to ask questions and make comments orally or in writing (thereby satisfying subsection (7)(b) and section 250S, if the meeting is an AGM). That is, it may be that the same number of virtual attendees are affected in the hybrid meeting and the virtual-only meeting, but the requirement to consider the virtual attendees as a whole means that the hybrid meeting could need to be adjourned where the virtual-only meeting may not need to be.

Given that technology failure is a key concern of many companies in preparing for meetings using virtual meeting technology, if interpreted in this way, subsection (7)(b) may offer a disincentive to companies to hold a hybrid meeting. This would seem to be an unintended consequence of the new laws.

The NRMA recognises the importance of enhancing member participation and transparency in meetings, including to ensure the ability of members to ask questions and make comments, regardless of the method by which a meeting is held. In order to achieve consistency in how the obligations with respect to ensuring such member participation are applied across meeting types, NRMA considers that the overarching consideration should be whether all members attending, as a whole, have the ability to ask questions and make comments, orally and in writing, regardless of their method of attendance.

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

The NRMA considers that the changes to the law allowing corporations to execute documents in a flexible manner to be very positive.

We consider that the changes strike the right balance between allowing corporations to quickly and flexibly execute documents (which reduces costs) and yet still give counterparties the ability to make sensible presumptions about the binding effect of signed documents given to them.

NRMA's experience with electronic signing of documents is generally positive. We have found that the majority of counterparties are utilising the flexibility afforded by the new laws to simplify, expedite and decrease the cost of document execution, particularly in circumstances where our workforce is located in multiple offices and where signatories often work remotely.

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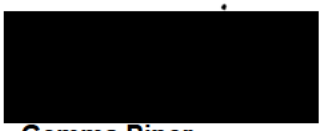
[1] For completeness, we note that section 1322(3A) provides that a meeting is not invalid on the ground that members as a whole did not have a reasonable opportunity to participate in the meeting unless the Court is of the opinion that a substantial injustice has been caused or may be caused, the injustice cannot be remedied by any order of the Court and the Court declares the meeting invalid. However, it is not clear whether this provision applies to a company's obligation under section 249S(7)(b) to allow members who attend a meeting using virtual meeting technology to exercise orally and in writing any rights of those members to ask questions and make comments.

Notwithstanding, our experience is that certain corporations (generally larger organisations or their advisers) continue to require wet-ink signatures in certain circumstances, even where electronic execution is clearly permitted in accordance with the new rules. This practice adds time and unnecessary cost to what should now be a simple and straightforward procedural formality. We consider that the full benefit of the legislative reforms will be realised once they become widely accepted and consistently applied by all businesses and their advisers.

Sincerely,



Gemma Piper
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