

Statutory Review of the Meetings and Documents Amendments

Final Report

August 2024

An aerial night view of a city skyline, likely New York City, with a network of white lines and glowing blue nodes overlaid on the buildings. The network lines connect various points across the city, creating a complex web. The city lights are visible in the background, and the sky is a deep blue with some clouds.

The Hon Robert Austin AM
Helen Bird
Judith Fox

© Commonwealth of Australia 2024

ISBN: 978-1-923278-00-4

This publication is available for your use under a [Creative Commons Attribution 4.0 International](http://creativecommons.org/licenses/by/4.0/legalcode) licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/4.0/legalcode>.



Use of Treasury material under a [Creative Commons Attribution 4.0 International](http://creativecommons.org/licenses/by/4.0/legalcode) licence requires you to attribute the work (but not in any way that suggests that Treasury endorses you or your use of the work).

Treasury material used ‘as supplied’.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics – then Treasury prefers the following attribution:

Source: The Australian Government the Treasury.

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see <https://www.pmc.gov.au/honours-and-symbols/commonwealth-coat-arms>).

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

Letter of transmittal

12 August 2024

The Hon Stephen Jones MP
Assistant Treasurer
Minister for Financial Services
Parliament House
CANBERRA ACT 2600

Dear Assistant Treasurer

You appointed us as the independent panel to review the amendments made by Schedule 1 of the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* and the *Corporations Amendment (Meetings and Documents) Act 2022* (the Statutory Review of the Meetings and Documents Amendments).

In accordance with our Terms of Reference and section 1687J of the *Corporations Act 2001*, we are pleased to submit our Report of the Statutory Review of the Meetings and Documents Amendments.

In conducting the review, the Panel has been particularly interested in the experience of companies, registered schemes, members, shareholders and other interested parties with the changes introduced by the amendments. To this end, we have had excellent engagement by individuals, companies and representative bodies during the review and we thank these participants for their time and contributions.

The Panel would also like to thank the Secretariat provided by Treasury. Kym Malycha, Winchin Yung, Anne Robertson, Adam Foda and Zahia Aicken have provided us with exceptional support, analysis and management of the Review.

The Panel is happy to assist with any matters in relation to our Report.

Yours sincerely



The Hon Robert Austin AM
Panel Chair



Ms Helen Bird
Panel Member



Ms Judith Fox
Panel Member

Contents

- Letter of transmittaliii**
- Glossary..... vii**
 - Terminology used in this Report vii
- Executive Summary1**
- Findings and recommendations5**
 - Company meetings.....5
 - Treatment of documents7
- Background to the Review9**
 - Context to this Report9
 - About this Report9
 - Terms of Reference10
 - Conduct of the Review11
- Introduction13**
 - Matters considered by the review13
 - Scope of the review15
- Part 1: Company meetings17**
 - Meetings of members17
 - Voting methods and scrutiny43
 - Directors’ meetings47
- Part 2: Treatment of documents49**
 - Giving meeting-related documents.....49
 - Technology-neutral signing and execution of documents53
- Appendix A: List of Submissions57**
- Appendix B: International treatment and experiences.....59**
 - Hybrid and wholly virtual meetings59
 - Electronic distribution of documents.....66
 - Electronic document signing and execution67
- Appendix C: Summary of the 2021 and 2022 amendments69**

Glossary

Terminology used in this Report

| Term | Explanation |
|------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 2021 Act | Schedule 1 of the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i> (Cth) |
| 2022 Act | <i>Corporations Amendment (Meetings and Documents) Act 2022</i> (Cth) |
| ACCR | Australasian Centre for Corporate Responsibility |
| ABA | Australian Banking Association |
| ACSI | Australian Council of Superannuation Investors |
| AGM | Annual general meeting |
| AICD | Australian Institute of Company Directors |
| AIIP | Association of Independent Insolvency Practitioners |
| AIRA | Australasian Investor Relations Association |
| ARITA | Australian Restructuring Insolvency & Turnaround Association |
| ASA | Australian Shareholders' Association |
| ASIC | Australian Securities and Investments Commission |
| ASX | Australian Securities Exchange |
| BCA | Business Council of Australia |
| CAANZ | Chartered Accountants Australia and New Zealand |
| CCIV | Corporate collective investment vehicle |
| Company, entity, registered scheme | See Note on terminology below. |
| Corporations Act | <i>Corporations Act 2001</i> (Cth) |
| GIA | Governance Institute of Australia |
| HIN | Holder identification number |
| HSF | Herbert Smith Freehills |
| Hybrid meeting of members | A meeting of members at one or more physical locations using technology that allows members to attend virtually. |
| KWM | King & Wood Mallesons |
| LCA | Law Council of Australia Business Law Section |
| Law Society of NSW | The Law Society of New South Wales |

| Term | Explanation |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Lumi | Lumi Global |
| MUFG | MUFG Corporate Markets |
| NRMA | National Roads and Motorists' Association Limited |
| NZSA | New Zealand Shareholders' Association |
| OECD | Organisation for Economic Co-operation and Development |
| SEC | Securities Exchange Commission |
| UK | United Kingdom |
| US | United States of America |
| Wholly virtual meeting of members | A meeting of members held by using technology that allows members to attend virtually, without any physical location for the meeting. |

Note on terminology

The reforms enacted by the 2022 Act are expressed to apply to companies and registered schemes, as defined in the Corporations Act, and to certain other entities. The definitions identifying entities to which the 2022 Act applies are wide enough to encompass business and investment bodies and some not-for-profit bodies. However, the Corporations Act section 111L specifies provisions of the Act dealing with meetings and documents which either do or do not apply to a not-for-profit body registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). This Report refers, for the sake of simplicity, to 'companies' without meaning to deny the broader and more technical scope of the provisions of the 2022 Act. However, this Report sometimes uses the word 'entities', rather than 'companies' so as to emphasise the broad scope of the statutory provisions. Similarly, this Report sometimes refers to 'registered schemes', where relevant, rather than 'companies'.

Executive Summary

The border closures and health risks ensuing from the COVID-19 pandemic significantly disrupted the ability of companies to operate and comply with legal obligations on their engagement and communication with their members. The government at the time had urgently put in place temporary measures, but followed with permanent legislative changes in 2021 and 2022 to allow meetings to be held in a hybrid or wholly virtual format, to communicate meeting related documents electronically, and to electronically sign and execute company documents.

Changes were made to the provisions of the *Corporations Act 2001* (Corporations Act) dealing with meetings and documents in Part 1 of Schedule 1 of the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* (2021 Act), which commenced on 14 August 2021. Part 1 was subject to a ‘sunset’ provision in the 2021 Act, scheduled to take effect on 1 April 2022, but the sunset provision was repealed by the 2022 Act.¹

Schedule 1 (dealing with signing and executing documents) of the *Corporations Amendment (Meetings and Documents) Act 2022* (2022 Act) commenced on 23 February 2022 and Schedule 2 (dealing with meetings and sending documents) of the 2022 Act commenced on 1 April 2022. The 2022 Act made many alterations and repeals of provisions of the 2021 Act, largely replacing the enactments made by Part 1 of Schedule 1 of the 2021 Act, though with improved drafting.

Section 1687J of the 2022 Act requires the Minister to cause a review to be undertaken of the operation of the Corporations Act resulting from the amendments made by the 2021 and 2022 Acts. This Report provides the Review that the Minister has requested.²

In preparing the Report, the Panel has largely concentrated on the provisions about meetings and documents made by the 2022 Act. This is because many provisions that were enacted by Part 1 of Schedule 1 of the 2021 Act have been replaced by provisions of the 2022 Act. Only a relatively small number of significant provisions in Part 1 of Schedule 1 of the 2021 Act remain in place in the Corporations Act without amendment. The main provisions are a replaceable rule in section 249T dealing with meeting quorums, section 250BA dealing with proxy documents, section 252J dealing with the contents of a notice of meeting, section 252R which makes provisions for meetings and notices of meetings of a registered investment scheme, and Division 4 of Part 2G.5 which deals with recording and keeping minute books. Additionally Part 2 of Schedule 1 remains in the Corporations Act, making provisions conferring powers on the Australian Securities and Investments Commission (ASIC) which, in summary, allow the regulator to grant an extension of time on a company’s obligation to hold an annual general meeting (AGM) (section 253T), and to make a determination if ASIC considers that it may be unreasonable to expect a company to hold meetings wholly or partially at specified physical venues (section 253TA), and to specify that a document may be given by electronic communication if ASIC considers it would be unreasonable to expect the company to give the document in a physical form (section 1345 of the 2021 Act).³ Submissions have not raised any of

1 See s 1679F in item 34 of the 2021 Act (the sunset clause) and item 46 of Schedule 2 to the 2022 Act which repealed the sunset clause.

2 See Corporations Act, s 1687J.

3 Section 1345 was further amended by the 2022 Act. Section 1345 allows the company to not provide a document in the requested form or to extend the time to provide the document where ASIC considers it would be unreasonable for the company to comply.

these provisions of the 2021 Act as a cause of concern, and they do not appear to the Panel to be controversial.

Members' meetings are an important forum for members to be informed of company activities and performance and to exercise their not insubstantial rights to participate, advance discussion of decision-making issues and vote on those issues when given the power to do so, thereby holding the board, management and the auditor to account.⁴ These functions continue under the changes introduced by the 2022 Act but the introduction of hybrid and wholly virtual meetings has affected their operation.

Hybrid meetings that provide substantially the same rights to members, whether they attend physically or remotely, have been accepted as an improvement to the opportunities that member meetings provide. They are seen as supplementing the capability of physical meetings with the possibility for increased attendance and participation at meetings by members who are located remotely or have difficulties in attending a meeting in person.

Wholly virtual meetings, on the other hand, are more contentious. They have been embraced by some companies and their representatives because they are seen as reducing costs and providing more access to members. In contrast, they are distrusted by some members and their representatives because of the potential for companies to use them to avoid scrutiny or diminish member rights to question and determine the company's direction.

In considering these alternate viewpoints, the Panel has given prominence to three particular considerations:

- That member meetings, regardless of the format in which they are held, provide an important mechanism for exchange of information and views between members and company management
- That the control and management of the general meeting, regardless of the format in which the meeting is held, resides in the board chair who has responsibility for ensuring that the meeting is properly conducted and that the business of the meeting is efficiently and fairly determined
- Balancing the fair exercise of member rights against a company's need for efficient decision-making at a virtual or hybrid meeting is evidently a task in process, given the relatively short period of time since technological solutions have been permitted in the conduct of member meetings.

The AGM is an important feature of corporate governance providing mandatory disclosure of information and a form of discourse (oral reports, questions and answers and in certain contexts, voting) between members and management of a company. This discourse arguably embodies two critical features: the deliberative component, whereby members get to ask questions in real-time and have them answered by the board and/or company auditor during the meeting;⁵ and an accountability component, whereby the meeting provides an opportunity for the board to account to members for positional conflicts of interest.⁶ The chair of an AGM has a statutory obligation to allow

4 *Re Compaction Systems Pty Ltd* [1976] 2 NSWLR 477, 485.

5 S Bottomley, 'From Contractualism to Constitutionalism: A Framework for Corporate Governance' [webpage], 1997, *Sydney Law Review* 19(3), p 277-313, accessed 9 August 2024. See also R Nolan, 'Shareholder Rights in Britain', 2006, *European Business Organization Law Review* 7(2), p 549-588; E Boros, 'Virtual Shareholder Meetings: Who Decides How Companies Make Decisions?', 2004, *Melbourne University Law Review*, 28(2), pp 265-289, accessed 10 August 2024.

6 R Simmonds, 'Why Must We Meet? Thinking About Why Shareholder Meetings Are Required', 2001, 19 *Company and Securities Law Journal* 19(8), pp 506-518.

a reasonable opportunity for members as a whole to ask questions and make comments on the management of the company at the meeting.⁷ Similar dynamics will also arise if an extraordinary general meeting is convened.

As to the management of the general meeting, the board chair is the person in charge of the meeting with responsibility for ensuring that the meeting is properly conducted.⁸ Procedural control includes the power to nominate who can speak, determining the efficient order of business, putting questions to the meeting and declaring whether resolutions are carried or not carried.⁹ In exercising those powers, the board chair must act with due care and diligence and in accordance with a director's fiduciary obligations under the general law and under the Corporations Act.

Submissions received by the Panel indicate that company boards and managers, and also members, are still learning to adjust to the new technological environment made possible by the 2021 and 2022 Acts. While managers and members continue to adjust to the new possibilities, member protection remains necessary to ensure that members' meetings operate efficiently and fairly and remain effective in all meeting formats. Ongoing take-up of wholly virtual meetings is low, while hybrid meetings remain popular but are being wound back to physical meetings. Some companies have taken to providing physical meetings with a webcast that allows limited interaction and perhaps no voting except by pre-meeting proxies. Although this is not a hybrid meeting, some members may not be fully aware of the limitations on their rights that follow by using technology to support a webcast.

The Panel advises that the operation of the 2022 amendments concerning meetings could be better targeted. The Panel has recommended changes designed to expand access to wholly virtual meetings, improve the operation of all kinds of members' meetings, reduce financial burdens for companies, and enhance effective and efficient member participation. The Panel also advises that listed companies should actively seek out the best technology for achieving a level of participation comparable to what is achieved at a well-conducted physical meeting. Management should look for better ways of informing and communicating with their members so as to realise the full benefits of the technology sanctioned by the 2022 amendments. This includes being clearer on meeting formats, making greater efforts to preserve real-time deliberations and providing more transparency regarding member questions and responses.

The Panel has also examined the use of technology and its ability to assist with the distribution, signing and execution of documents. It is the Panel's view that the amendments to the treatment of documents are working and have been well received by companies.

As with meetings, the relatively short period of time in which changes to the execution and distribution of documents have been in place has resulted in some frictions in the communications between companies and their investor base. The amendments permit individuals to elect to receive documents in hard copy or electronically, but companies may not be making it clear enough to members when they should make these elections and how they operate. As a result, members are not necessarily receiving their materials in the way they expect or, in some cases, at all.

The Panel has made recommendations to address these ongoing frictions and examine ways to further reduce costs when dealing with company documents.

⁷ See s 250S of the Corporations Act.

⁸ *Kelly v Wolstenholme* (1991) 9 ACLC 785, *Woonda Nominees Pty Ltd v Chng* [2000] WASC 173. And note *Australian Securities and Investments Commission v Mitchell (No 2)* (2020) 146 ACSR 328; [2020] FCA 1098, at [1410]-[1428].

⁹ Note, however, the member's right to demand a poll: see s 253K of the Corporations Act.

Findings and recommendations

Company meetings

Meetings of members

In respect of company meetings, the Panel finds that:

- Companies and their members are still transitioning to the use of virtual meeting technology. The use of technology has been welcomed by most stakeholders, at least for hybrid meetings, but concerns remain about whether wholly virtual meetings, particularly for listed public companies, might diminish the level and effectiveness of communication between management and members. Companies, their members and their advisers may need more time to become adept with the new technology and learn from best practice examples of its use and development over time.
- Companies' communications with their members about meetings should make it clear what the format is and what technology is being provided to allow for participation. The Panel is concerned about the use of physical meetings with a webcast that does not allow for virtual participation and the potential misconceptions by members that these are hybrid meetings.

Recommendation 1

The Panel recommends to the Government that no legislative change be made in relation to the meeting formats available for listed public companies and listed registered schemes. That is, listed public companies and listed registered schemes should be allowed to hold a wholly virtual meeting only if to do so is permitted in their constitution.¹⁰

Recommendation 2

The Panel recommends to the Government that other entities, such as proprietary companies, unlisted public companies, unlisted registered schemes, not-for-profits and companies limited by guarantee, should be permitted to determine the appropriate meeting format. For those companies, there should be no statutory requirement of constitutional permission before a wholly virtual meeting may be held.¹¹

¹⁰ The Panel notes that the current requirement for a constitutional provision permitting the company to hold a wholly virtual meeting would not prevent adoption of a constitutional prohibition on wholly virtual meetings, if that is what the requisite majority of members wish.

¹¹ The Panel notes that under this recommendation, an entity is not prevented from adopting a constitutional prohibition on wholly virtual meetings, if that is what the requisite majority of members wish.

Recommendation 3

The Panel recommends to the Government that entities such as ASIC, Australian Securities Exchange (ASX) and other bodies which provide guidance on matters of corporate governance should consider publishing recommended standards to be adopted by listed public companies, to give members confidence that if they support a constitutional amendment to permit wholly virtual meetings, their company will not engage in practices that were the subject of complaints by some members in submissions to the Panel. This should give members some confidence that they can support a special resolution to permit wholly virtual meetings in their company without putting themselves at risk that their company's management will compromise their basic member rights. Standards should address matters such as using technology to replicate the in-person experience, how the chair engages with members in a virtual setting, how questions are taken and managed, how questions are displayed to members and whether the company will appoint an independent supervisor of the processes adopted by the company for voting and handling questions at members' meetings.

Recommendation 4

The Panel recommends to the Government that a review of the formats of AGMs and other members' meetings be undertaken in 5 years' time. This would provide opportunities to observe how the conduct of meetings has evolved during the transition and whether any significant issues have arisen. The future review could consider whether the present requirement of constitutional permission for a wholly virtual meeting remains appropriate. This would also allow time for:

- members to develop confidence that companies will hold meetings that enable them to participate and vote in the meeting
- companies to better investigate member experiences and develop mutually agreed ways to mediate those concerns and to demonstrate responsiveness that will reinforce trust by members and co-operation between members and management in the virtual meeting process
- technology to further improve and companies to gain a better understanding to allow companies to provide members with a more seamless real-time experience to participate and vote at meetings
- companies to better communicate with their members to manage expectations about the meeting format and ensure members can reasonably participate and vote in meetings.

Voting methods and scrutiny

In respect of voting at members' meetings, the Panel finds that:

- Requiring the substantive resolutions of listed companies to be voted on via a poll continues to provide a modern and effective governance practice to ascertain the true will of the members on company propositions whilst maintaining confidence in voting outcomes.
- The operation of independent reports on polls has generally been functioning well.

Recommendation 5

The Panel recommends to the Government that the laws requiring listed companies and registered schemes to vote on substantive resolutions via poll be maintained.

Recommendation 6

The Panel recommends to the Government that the laws on independent reports on polls be maintained.

Treatment of documents

Giving meeting-related documents

In respect of giving meeting-related documents, the Panel finds that:

- The electronic communication of meeting-related documents is supported by members and allows for more efficient distribution of documents, whilst maintaining flexibility for members to elect methods of communication that best suit their needs.
- Companies could benefit from increased guidance on the legislative boundaries and best practice for distribution of meeting-related documents.
- Companies should endeavour to utilise technology, particularly when it facilitates the adoption of internationally aligned standards for communication of meeting-related documents.

Recommendation 7

The Panel recommends to the Government that the laws concerning electronic distribution of meeting-related materials be maintained.

Recommendation 8

The Panel recommends that the Government considers alignment of meeting-related document distribution requirements for not-for-profit entities with other not-for-profit document distribution requirements under the Corporations Act.

Technology-neutral signing and execution of documents

In respect of the signing and execution of company documents, the Panel finds that:

- Electronic signatures and document execution are broadly supported by stakeholders and are seen as a fundamental step towards a modernised and technology facilitated economy.

The Panel supports the work of the Commonwealth and state and territory Working Group considering the harmonisation of statutory declarations and deeds across various jurisdictions.

Recommendation 9

The Panel recommends to the Government that the laws concerning electronic signing and execution of documents be maintained.

Recommendation 10

The Panel recommends to the Government that there be an examination of whether the power to act for a company in relation to company documents should be extended to corporate entities.

Recommendation 11

The Panel recommends to the Government that, due to the limited timeframe for operation of the amendments, their potential for misuse or facilitation of fraud should be examined in 5 years' time to ensure no significant issues have arisen.

Background to the Review

Context to this Report

The COVID-19 pandemic significantly disrupted the ability of companies in Australia to run their businesses and comply with legal obligations to hold meetings and execute documents.¹² To facilitate the continuation of business and mitigate the economic impact of COVID-19, the government at the time introduced temporary changes to allow these entities to meet by using virtual technology, either alone or in combination with physical attendance, and to send, sign and execute more documents using electronic technology. More permanent amendments were made in 2021 and 2022 to enshrine these new arrangements.

Schedule 1 of the 2021 Act commenced on 14 August 2021. These amendments allowed the electronic execution of company documents, and for companies to hold meetings, provide notices and other documents relating to meetings, and keep minutes using electronic means or other alternative technologies.

Further amendments were made by the 2022 Act, which commenced on 23 February 2022 (in relation to signing and executing documents) and 1 April 2022 (in relation to meetings and sending documents). The amendments created a permanent statutory mechanism for the electronic execution of company documents and permanently allowed companies to provide meeting-related documents electronically. In respect of meetings, the amendments allowed companies to use technology to hold meetings and made additional amendments to facilitate the conduct of meetings.

About this Report

In June 2024, the Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP, appointed the Hon Robert Austin AM as Chair and Ms Helen Bird and Ms Judith Fox as members of the Panel to conduct the Review. The Assistant Treasurer provided the Panel with its Terms of Reference for the Review.

This Report sets out the findings and recommendations of the Panel's Review of the amendments to the Corporations Act made by:

- Schedule 1 of the 2021 Act; and
- the 2022 Act.

¹² For simplicity, this Report will usually refer to 'companies' to denote companies and registered schemes, as defined in the Corporations Act, and to certain other entities without meaning to deny the broader and more technical scope of the provisions of the 2022 Act. See the Note on terminology.

The Review was conducted under, and for the purposes of, section 1687J of the Corporations Act. That section requires the Minister to cause a review of the amendments made by both the 2022 Act and 2021 Act to be conducted no later than the earliest practicable day after the end of 2 years after the commencement of Schedule 1 to the 2022 Act.

Section 1687J also required that, to the extent it related to the amendments allowing virtual meetings of companies, the review must be conducted by an independent panel with at least one member of the panel having experience in each of the following categories:

- corporate governance and the role of company directors;
- advocating for corporate social responsibility; and
- representing the interests of shareholders.

The Minister must cause a written report from the review to be prepared. That report must be tabled in each House of Parliament within 15 sitting days of that House after the report is given to the Minister. If the report is not tabled by the first sitting day of a House of Parliament to occur 30 months after the commencement of Schedule 1 to the 2022 Act, provisions relating to holding wholly virtual meetings will cease to have effect.

The Government must provide a written response to any recommendations in the report which must be tabled in each House of Parliament no later than the first sitting day of that House occurring 3 months or more after the day the report is first tabled in either House of the Parliament.

Terms of Reference

The Panel conducting the Statutory Review of the Meetings and Documents Amendments is to examine the operation of the amendments to the *Corporations Act 2001* made by both the *Corporations Amendment (Meetings and Documents) Act 2022* and Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

In conducting its review, the Panel is to have regard to the effects of the amendments in supporting the efficient and effective operation of Australian companies and capital markets, recognising the importance of shareholder participation, transparency and good corporate governance. This includes having regard to:

- the effects of the amendments relating to virtual meetings on the conduct of company and registered scheme meetings, including:
 - participation by members and their ability to exercise their voting rights; and
 - the effect on the flexibility and costs of holding meetings.
- the effects of the amendments relating to electronic document execution and electronic giving and sending of meeting related documents by companies, registered schemes and disclosing entities, including their cost and effectiveness.

The Panel is also to have regard to the experience in other countries of the use of technology and any lessons that could apply to Australia.

The Panel is to consult with the public and invite submissions.

The Panel may make recommendations to the Government in respect of the matters in the terms of reference above.

The Panel is to provide a final report with the outcomes of their review to the Government by 14 August 2024.

Conduct of the Review

On 24 June 2024, the Panel released a consultation paper to inform the Panel's deliberations and the findings and recommendations of this Review.¹³ The consultation paper sought feedback from stakeholders and members of the public about the amendments in the 2021 Act and 2022 Act. Interested stakeholders were invited to make submissions by 19 July 2024.

The consultation paper included 13 questions addressing the matters required to be considered by the Terms of Reference as well as other matters.

The Panel received 38 submissions responding to the consultation paper, including 4 that are either confidential or partially confidential. A list of the submissions is available at Appendix A and copies of the non-confidential submissions are available on the Treasury website. Stakeholders making submissions included: ASIC; ASX; individuals (including retail shareholders); companies (including share registry service providers); law firms; legal counsel representatives; bodies representing directors and company secretaries, businesses, clubs, the accounting profession, the banking industry and the insolvency industry; and bodies representing members and superannuation investors.

The Panel also met with a range of stakeholders to directly canvass views and ask questions about relevant experiences following the amendments. This included three roundtables with attendees comprising industry bodies, registry services, members and member representatives, not-for-profits, small and large member-based organisations and companies. The Panel also met with regulators, individuals representing company management and experts in the field of corporations law.¹⁴

In making the findings and recommendations in this Report, the Panel has had regard to all the feedback received from stakeholders in response to the consultation paper. The Panel also followed up some submissions with targeted questions to obtain further information.

¹³ *Statutory Review of the Meetings and Documents Amendments*, Treasury website, accessed 9 August 2024.

¹⁴ Many stakeholders reflect expertise in corporate governance as members of the ASX Corporate Governance Council.

Introduction

Matters considered by the review

The 2021 Act and 2022 Act introduced significant changes affecting:

- the operation of company meetings;
- the communication of meeting materials by companies with their members; and
- the ability of companies to sign and execute documents electronically under the Corporations Act.

These changes have affected how members interact with companies, their participation in meetings, and corporate transparency and corporate governance. For the purposes of this Report, the term ‘corporate governance’ is taken to describe ‘the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations.’¹⁵ It includes ‘the mechanisms by which companies, and those in control, are held to account.’¹⁶

One of those mechanisms is the AGM. The functions of the AGM of a public company include decision-making by the members and communication of information to the members on some fundamentally important matters, such as tabling and approval of the annual report, the chair’s and CEO’s address to the members reviewing the company’s performance, where necessary the appointment of an auditor, approval of remuneration, and the election of directors. These matters must be attended to if the company is to continue in operation. There may also be matters to be moved by way of notices of motion by members. The structure of the AGM requires a form of discourse (oral reports, questions and answers and in certain contexts, voting) between members and management of a company with two key features: the deliberative component, whereby members get to ask questions in real-time and have them answered by the board and/or company auditor during the meeting;¹⁷ and an accountability component, whereby the meeting provides an opportunity for the board to account to members in respect of matters under consideration at the meeting, and in some circumstances to account for positional conflicts of interest.¹⁸ Judicial support for the deliberation component and accountability feature of company meetings can be found in numerous judicial statements about physical meetings.¹⁹

Good corporate governance is critical to the effectiveness of two sets of the changes considered in this Report. The first set of changes concerns the format for AGMs. Whatever format is adopted by a company under the new laws should address the requirements of member deliberation and participation (asking real-time questions and receiving real-time answers), voting and accountability to members. The second set of changes concerns the transmission of meeting communications

15 Justice Owen, ‘*The Failure of HIH Insurance*’, Volume 1, 2003, Commonwealth of Australia, p xxxiii.

16 ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* [pdf 2.0MB], 4th edition, 2019, Australian Securities Exchange website, p 1, accessed 10 August 2024.

17 S Bottomley, ‘From Contractualism to Constitutionalism: A Framework for Corporate Governance’, 1997.

18 R Simmonds, ‘Why Must We Meet? Thinking About Why Shareholder Meetings Are Required’, 2001.

19 See, for example, *Re Compaction Systems Pty Ltd* [1976] 2 NSWLR 477, 485; *Re Harmer Ltd* (1959) 1 WLR 62, *Re Duomatic Ltd* [1969] 2 Ch 365. For analysis of both judicial statements and academic commentary on this issue, see also Elizabeth Boros, ‘Virtual Shareholder Meetings: Who Decides How Companies Make Decisions?’

between the company and its members. Whatever transmission means is adopted by a company must protect the transparency of meeting documents for all members.

The third set of changes considered in this Report concerns the format for signing and executing company documents. The signing and executing of documents facilitates decisions and commitments by companies and it is important that these be carried out effectively and efficiently for the good operation of companies. Whatever format is chosen should meet these criteria for conducting business transactions.

By achieving these aims, the changes encapsulate the goals of good corporate governance and the efficient and effective operation of Australian companies for both publicly listed and non-publicly listed companies. In the case of publicly listed companies, they aim to make possible effective member participation in company meetings and promote investor confidence, which enhances the efficient and effective operation of Australian publicly listed companies and their ability to compete for capital from public markets.²⁰

In this Report, the Panel examines each of the three major elements of the amendments in-turn. While there are some linkages between the three – for example, timely communication of meeting materials supports efficient and effective debate and consideration at meetings – the issues in the operation of each element are largely separate. Nevertheless, in all elements the Panel has been concerned with the experience of companies, members and other interested parties with the changes introduced by the amendments. The Panel has also been mindful of the effects of the amendments on member participation, and the flexibility and costs of companies, registered schemes, disclosing entities and individuals.

The need for companies to be able to utilise technology to conduct business efficiently and effectively engage with their members and the role of technology in doing so, is well accepted. There is also a recognition of the need for Australia's laws to be prepared for the evolution of technology and future disruption that requires fast and flexible reactions by government, regulators and business. However, the Panel has chosen to focus on how to use the technology to best support both companies and members in their respective roles and positions without undermining member meetings as a critical platform for discourse between companies and members.

The amendments to company meetings have proven to be the more contentious topic for the Panel. There are multiple aspects to the concerns of companies and their members.

The amendments to the communication of meeting related materials and document signing and execution have been more widely accepted. However, some issues with the implementation of the amendments have emerged, particularly in communications by companies with their members.

The issues raised with the Panel in relation to member meetings have focussed on how to use technology to best support the primary functions of member meetings to conduct company business, provide a deliberation component for members and ensure accountability and oversight of the board, the company and its auditor.

20 ASX, *Corporate Governance Council Corporate Governance Principles and Recommendations*, 4th edition, 2019, p 1.

Scope of the review

The Panel's Terms of Reference require concentration on entities and activities that are regulated under the Corporations Act and are affected by the amendments. They include companies, registered schemes (such as managed investment schemes), corporate collective investment vehicles (CCIVs) and, for documents, disclosing entities.²¹

The Panel did not examine issues relating to:

- charities, not-for-profit organisations and other entities that are not subject to the Corporations Act, such as those created under state laws
- First Nations businesses incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)
- registered foreign companies, including registered foreign companies listed on an Australian stock exchange
- entities issuing CHESS Depositary Interests in Australia.

21 CCIVs were included in the amendments through Schedule 4 of *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*, which received assent on the same date as the 2022 Act.

Part 1: Company meetings

Meetings of members

Background

Meetings of the members of a public company serve a couple of key functions in Australia's corporate governance regime. They are a form of information sharing, decision-making and discourse (oral reports, questions and answers and, in expressly permitted contexts, voting contests) between members and management. Decision-making by members includes the approval of accounts and election of directors as required by law or the company's constitution. The fundamental requirements and arrangements for meetings fall under the purview of the Corporations Act. However, additional obligations are also imposed on listed public companies through financial market listing rules and corporate governance requirements.

The AGM is the major annual meeting of members. AGMs provide an opportunity each year for members to collectively deliberate and engage with directors and auditors and hold them to account, for the board to report on the company's performance, and to transact critical business outside of the scope of daily management that requires member approval through voting. The statutory business of an AGM includes consideration of the annual financial report, directors' report and auditor's report and voting by members on decisions, such as the election of board members, appointment of auditors, changes to the company name, status or capital structure and constitution, director remuneration and, in the case of listed public companies, approval of remuneration reports.²² The AGM is also a key forum for information sharing and members must be given a reasonable opportunity as a whole to ask questions of the board, senior management and the auditor.²³ In the case of a listed company, the members must be given a reasonable opportunity to ask questions about or make comments on the remuneration report.²⁴

Retail shareholders in listed companies are likely to rely more heavily than institutional shareholders on the AGM to obtain information and express views directly to those responsible for running the company. Institutional investors (such as superannuation funds, other managed funds and life insurance companies) have other avenues of communication and can raise matters directly with the company's leadership and management.

Public companies with more than one member must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.²⁵ Proprietary companies and registered schemes are not required to hold AGMs, but they may decide to do so. The process for companies notifying members of the AGM and the business to be considered is regulated through the Corporations Act, the company constitution and, for listed companies, the relevant financial market listing rules.

²² See Corporations Act, ss 250R and 317.

²³ See Corporations Act, ss 250S and 250T.

²⁴ See Corporations Act, s 250SA.

²⁵ See Corporations Act, s 250N.

Other meetings of members may also be called by directors or by requisition of particular members.²⁶ This includes extraordinary general meetings which can deal with important issues such as removal of a director, approval of a significant transaction or matters that cannot be left for the next AGM, and scheme of arrangement meetings of members to consider the reorganisation of their company.

Effect of the amendments

Holding a members' meeting

Prior to the amendments, members' meetings were required to be held at a physical location. Technology could be used to connect people at one or more other locations to the main one but wholly virtual meetings were not permitted and it was unclear whether attendance at an otherwise physical meeting via virtual meeting technology from an undesignated physical location was permitted.²⁷

The 2021 amendments allowed companies to use technology to hold a wholly virtual meeting or allow virtual attendance from an undesignated physical location at a physical meeting (a form of hybrid meeting).²⁸ Companies could use these as alternatives to a physical meeting or a meeting in one or more physical locations using technology (another form of hybrid meeting). The technology used in these meetings must have given persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate without being physically present in the same place.²⁹

The 2021 amendments expired on 31 March 2022. The 2022 amendments made permanent the ability for companies to either hold a meeting:

- at one or more physical venues
- at one or more physical locations and using virtual meeting technology (a hybrid meeting)
- using virtual meeting technology only if they are expressly required or permitted by a company constitution (a wholly virtual meeting).³⁰

The amendments did not specify or require a particular format for a members' meeting and applied broadly, from small not-for-profit companies to large, publicly listed companies. The amendments also made it clear that hybrid meetings could be held with those attending virtually being in an undesignated physical location.³¹

26 Courts may also oblige companies to call meetings in response to actions taken by members or regulators.

27 In the pre-amendments Corporations Act: ss 249S and 252Q allowed companies members' meetings at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate; ss 249R and 252P required the meeting to be held at a reasonable time and place; ss 249L and 252J required the meeting notice to set out the technology used to facilitate the meeting if it was to be held in two or more places.

28 See ss 253P, 253Q and 253QA as inserted by item 31 of Schedule 1 to the 2021 Act.

29 See subs 253Q(1) as inserted by item 31 of Schedule 1 to the 2021 Act.

30 See Corporations Act, ss 249R and 252P.

31 Corporations Act paras 249R(b) and 252P(b) provide for members' meetings to be held at one or more physical venues and using virtual meeting technology, and paras 249L(1)(a) and 252J(a) provide that a notice of a meeting of members must set out sufficient information to allow the members to participate via technology if virtual meeting technology is used to hold the meeting.

The 2022 amendments also ensured that companies registered as bodies corporate under the *Australian Charities and Not-for-profits Commission Act 2012* could use the general provisions to hold physical, hybrid, or if expressly permitted or required in their constitution, wholly virtual meetings.³² As at 9 July 2024, there were over 12,000 companies that met this criterion.

Formats of members' meetings

Key aspects of the meeting formats permitted by the amendments to the Corporations Act are as follows:

- **Physical meeting:** A meeting is held in a physical location, where members can ask questions, make comments or vote directly in person. Members who do not attend can vote by proxy or by pre-voting directly if their vote is submitted 48 hours prior to the meeting.
- **Hybrid meeting:** A meeting is held in a physical location, with members able to participate (including asking questions or making comments in oral or written format in real-time on the virtual meeting platform and voting directly) using virtual meeting technology. Members who do not attend can vote by proxy or by pre-voting directly if their vote is submitted 48 hours prior to the meeting.
- **Wholly virtual meeting:** A meeting is held via virtual meeting technology only, with members able to participate (including asking questions or making comments in oral or written format in real-time on the virtual meeting platform and voting directly) using virtual meeting technology. Members who do not attend can vote by proxy or by pre-voting directly if their vote is submitted 48 hours prior to the meeting.

Note that, on the issue of questions and comments, the obligation on the company holding a meeting using virtual meeting technology is to provide members the ability to exercise their rights to ask real-time questions and make comments orally *and* in writing.³³

Participation in a members' meeting

A fundamental aspect of members' participation in company meetings is the previously discussed deliberative component of an AGM. It consists of their ability to ask questions and make comments about the materials provided and the performance of the company and its representatives, and in turn, to vote on resolutions and company business where permitted by the company's constitution or required by the Corporations Act.

32 See Corporations Act, subs 111L(1).

33 See Corporations Act, subs 249S(7) and 252Q(7).

Supporting this, members' meetings must be held at a reasonable time and place. Prior to the amendments, if the meeting used technology, including being held at two or more venues, then that technology needed to provide members as a whole a reasonable opportunity to participate both as to the deliberation process and the exercise of voting rights.³⁴

The 2022 amendments expanded and clarified these provisions, seeking to ensure that companies must give the members as a whole a reasonable opportunity to participate in the meeting regardless of the meeting format. After changes first inserted by the 2021 Act, the 2022 amendments consolidated and clarified that the conditions for members' reasonable opportunity to participate applied to all meetings of members, regardless of the format.³⁵

'A reasonable opportunity to participate' includes, but is not limited to, the following:

- the physical venue for physical or hybrid meetings must be reasonable, which could be determined by a combination of factors, including where the company is physically registered, where members reside or where the directors are located³⁶
- technology used to connect more than one physical venue or facilitate virtual attendance and participation must be reasonable, including allowing members as a whole to vote and exercise any pre-existing rights they have to ask questions and make comments both verbally and in writing³⁷
- the time of the meeting must be reasonable at the place the meeting is being held for a physical or hybrid meeting, or where it would be appropriate to hold a virtual meeting.³⁸

It was not intended for the 2022 amendments to alter the pre-existing rights of members to ask questions or make comments at meetings. Instead, the amendments were intended to relate to the manner in which any pre-existing rights can be exercised.³⁹

34 See pre-amendments Corporations Act ss 249R, 249S, 252P and 252Q. Giving 'members as a whole an opportunity to participate' was first introduced into Australia's corporate law in 1998. It was intended to mean that it is not required that each individual member have an opportunity to participate but that the vast majority of members can contribute and no member is intentionally excluded. For most companies a reasonable opportunity to participate would mean that each member is able to communicate with the chairperson and be heard by other members attending the meeting, including those at other venues. Other provisions of the Corporations Act already required that members as a whole be allowed a reasonable opportunity to ask questions or make comments on company management and to ask questions to the auditor or the auditor's representative.

35 See Corporations Act, ss 249S and 252Q.

36 See Corporations Act, subss 249S(4) to (5) and 252Q(4) to (5), and paragraph 1.90 of the [Revised Explanatory Memorandum to the Corporations Amendment \(Meetings and Documents\) Bill 2021](#), Australian Parliament House website, p 19, accessed 21 June 2024.

37 See Corporations Act, subss 249S(6) to (7) and 252Q(6) to (7), and paragraphs 1.92 and 1.93 of the Revised Explanatory Memorandum to the Corporations Amendment (Meetings and Documents) Bill 2021, pp 19-20.

38 See Corporations Act, subss 249S(3) and 252Q(3), and paragraph 1.91 of the Revised Explanatory Memorandum to the Corporations Amendment (Meetings and Documents) Bill 2021, p 91. Additional explanation is provided in paragraph 1.30 of the [Explanatory Memorandum to the Treasury Laws Amendment \(2021 Measures No. 1\) Bill 2021](#), Australian Parliament House website, p 13, accessed 21 June 2024.

39 Paragraph 1.93 of the Revised Explanatory Memorandum to the Corporations Amendment (Meetings and Documents) Bill 2021, p 20.

The constitutional requirement for wholly virtual meetings

In order to hold a wholly virtual meeting, the constitution of a company must explicitly require or permit the format.⁴⁰ Amendments to an existing constitution to require or permit this are made by passing a special resolution, which requires at least 75 per cent voting in favour at a meeting of members.⁴¹

The amendments also gave ASIC powers to allow an entity to hold a wholly virtual meeting without constitutional approval in exceptional circumstances.⁴² The power is designed to provide short-term emergency relief.⁴³ An example of when this power could be used is a future pandemic. ASIC noted it had used this power to make *ASIC Corporations (Virtual-only Meetings) Instrument 2022/129* due to the ongoing uncertainty during the COVID-19 pandemic at the time.⁴⁴

Experience of stakeholders

Formats of members' meetings

ASIC stated that, overall, the amendments to expand how members' meetings may be held appear to be operating effectively and have been generally well received.⁴⁵

In addition to the standard meeting formats, companies also offer webcasts of their AGMs that the public, employees, and other guests as well as members can access to observe proceedings.⁴⁶ This practice predates the amendments and the pandemic. The Panel was informed that some companies are now offering a capability for people using the webcast platform to ask questions, or make comments, in writing in advance. However, the Panel understands that as a matter of practice, any members observing via the webcast are not considered to be attending the AGM and may not vote at the meeting or fully exercise their rights as a member. If there is no ability for the members to ask questions, make comments and validly vote via the virtual meeting technology in use, then it would appear that the meeting must be regarded as a physical meeting comprising only those members who are present in the venue. Submissions by investor representatives indicate that the expansion in permitted meeting formats may have resulted in some confusion about the status of these webcasts. They suggest that some companies may be supporting a false impression that a webcast-enabled physical meeting is a hybrid meeting. It is not clear if this is inadvertent or intentional, but some meeting notices reviewed by the Panel can make it difficult to determine what format is being used for a meeting without a close reading.

40 See Corporations Act, paras 249R(c) and 252P(c).

41 See Corporations Act, ss 136 and 250MA for companies, and ss 253LA and 601GC for registered schemes.

42 See Corporations Act, s 253TA. ASIC used this power to issue [ASIC Corporations \(Virtual-only Meetings\) Instrument 2022/129](#), Federal Register of Legislation website, accessed 9 August 2024, which commenced on 1 April 2022. This extended the deadline for listed companies and listed and unlisted registered schemes to hold virtual only meetings for an additional two months until 31 May 2022, and for unlisted companies an additional three months until 30 June 2022. ASIC also has the power to extend the time period (up to 12 months) for companies and registered schemes to hold their AGM if there are circumstances beyond their control – see Corporations Act, s 253T.

43 Paragraph 1.25 of the Supplementary Explanatory Memorandum to the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021, p 12.

44 ASIC submission p 8.

45 ASIC submission p 2.

46 The webcasts have historically been accessed by employees, guests, and financial observers.

Trends in meeting format

MUFG Corporate Markets (MUFG), Computershare Investor Services (Computershare) and the Governance Institute of Australia (GIA) stated that larger companies mainly held hybrid meetings in 2023.⁴⁷ Computershare stated that '[t]he hybrid format was used by 21 per cent of our client base, predominantly by ASX100 companies.'⁴⁸ MUFG stated that '[t]he majority of [their clients in] the ASX100 (66.7 per cent) and the ASX200 (65 per cent) utilised the hybrid format for their meetings.'⁴⁹ This is consistent with the pattern observed by King & Wood Mallesons (KWM) in their yearly Deep Dive into ASX200 AGMs reports. In 2024, KWM reported that the use of hybrid AGMs by companies in the ASX200 increased from 18 per cent in 2021 to 61 per cent in 2023. In person AGMs held by ASX200 companies rose in that time from 2 per cent in 2021 to 34 per cent in 2023. Wholly virtual AGMs dropped to 2 per cent in 2023 for ASX200 companies, from 80 per cent in 2021.⁵⁰ This is likely to reflect the immediate response to health risks and mobility restrictions introduced by governments due to the COVID-19 pandemic severely limiting the ability to hold physical meetings in 2020 and 2021.

In contrast, smaller listed companies seem to prefer single mode meetings, particularly in-person AGMs, due to the cost, time, considerations of the number and the typically low attendance of members.⁵¹ ASIC stated that, of 643 notices of company meeting of all types for the period 1 July 2022 to 31 December 2023 they reviewed, 14 per cent (89 notices) were wholly virtual and 24 per cent involved hybrid meetings. The 89 wholly virtual meetings were held by 82 companies, of which: 71 were listed companies, 10 were public companies, one held one meeting as a listed company and a second after de-listing. Of the 82 companies, only 2 formed part of the ASX200.⁵²

Registered schemes are not required to hold AGMs and so the experience of these entities is more limited. The GIA stated that the members they had consulted for their submission had limited experience of registered schemes. GIA stated 'members whose corporate structure 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.'⁵³

Clayton Utz's submission provides a breakdown of meeting formats for a larger group of companies based on their market capitalisation. In the 2022 AGM season, 22 per cent of ASX100 company AGMs were physical, 74 per cent were hybrid, and 4 per cent wholly virtual. This compares to a preference for single method meetings (either wholly physical or wholly virtual) for the ASX301-500 – 47 per cent of the ASX301-500 held physical AGMs, while 40 per cent were hybrid, and 13 per cent were wholly virtual.⁵⁴ The popularity of the formats reported by Clayton Utz, and relative to the ASX500 as a whole, can be seen in Figure 1.

47 Computershare submission; GIA submission; MUFG submission.

48 Computershare submission p 1.

49 MUFG submission p 3.

50 Newnham E, Hill J, Muraca J, Nicholson D, Dinh H & Su S *Deep Dive into ASX200 AGMs in 2023*, King & Wood Mallesons website, p 5, accessed 10 August 2024. Note that the Panel's consultation paper incorrectly cited this report as published in 2023.

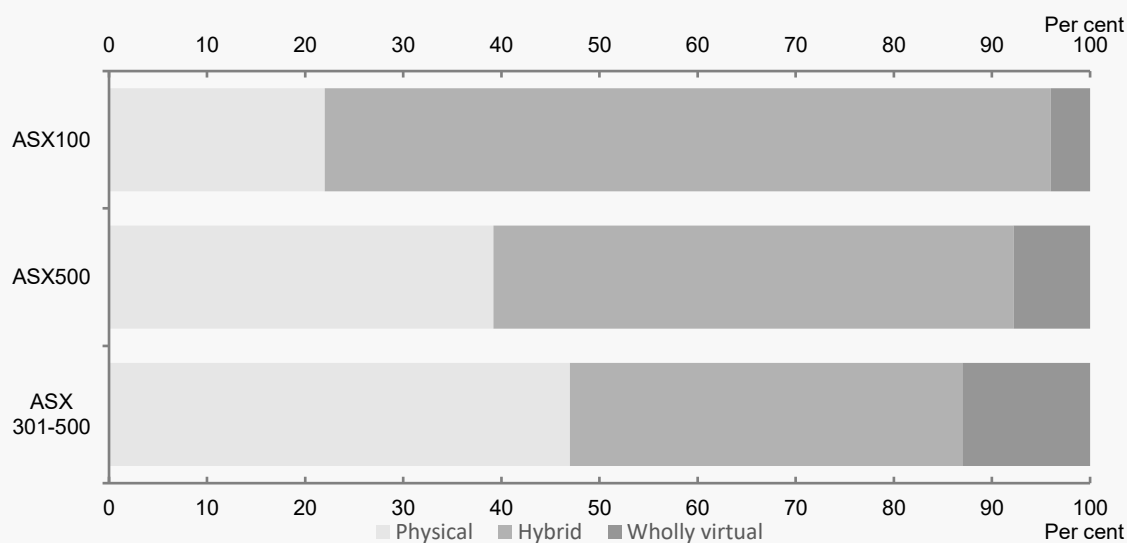
51 Computershare submission; GIA submission; MUFG submission.

52 ASIC submission p 4.

53 GIA submission p 6.

54 Clayton Utz submission pp 14-15.

Figure 1. AGM format in 2022 by ASX capitalisation



Source: Treasury analysis of Clayton Utz submission Annexure “B”.

International trends in meeting formats

Internationally, jurisdictions commonly allow the use of wholly virtual and hybrid meetings. Of the 49 jurisdictions surveyed in the Organisation for Economic Co-operation and Development (*OECD Corporate Governance Factbook 2023*), wholly virtual meetings were allowed in 37 jurisdictions and hybrid meetings were allowed in 40 jurisdictions, as at the end of 2022.⁵⁵ Similarly, World Bank data collected across 153 economies in 2020 showed that 84 per cent of economies allow virtual members’ meetings.⁵⁶

The Australian Institute of Company Directors (AICD) stated that it ‘understands that other jurisdictions have seen a major uptake of wholly virtual and hybrid meetings since the COVID-19 pandemic. For example, one virtual technology platform provider observed amongst its clients that the overall percentage of hybrid meetings globally was 40 per cent in 2023 (up from 26 per cent in 2022), while wholly virtual meetings and physical meetings convened were 39 per cent and 21 per cent respectively.’⁵⁷

ASIC stated that ‘internationally, the use of virtual-only meetings is broadly supported, but administrative requirements vary. Some countries require amendment of the constitution to permit virtual-only meetings (for example, Japan). Hong Kong and Singapore do not require constitutional amendment to permit virtual-only meetings but do include the ability for an entity to expressly preclude them.’⁵⁸

55 OECD, *Corporate Governance Factbook 2023*, 2023, OECD Publishing website, p 77, accessed 2 August 2024. Note that both counts include Australia.

56 V Eknath, T Londero & S Simonyan, *Are virtual meetings for companies’ shareholders and board members the new normal?*, 2021, World Bank Blogs website, accessed 2 August 2024.

57 AICD submission p 9.

58 ASIC submission p 11.

International trends in meeting formats (continued)

These trends reflect differences in retail shareholder ownership in listed companies in various jurisdictions. In Australia, retail share ownership in publicly listed companies is significant with 7.7 million out of Australia's 20 million adult population (38 per cent) holding on-exchange investments.⁵⁹ Retail shareholder investment is not as significant in jurisdictions such as the United States of America (US) and the United Kingdom (UK). Importantly, in Australia, under the holder identification number (HIN) model, retail shareholders receive meeting related documents directly. In other jurisdictions, the custodian model is more prevalent and therefore retail shareholders rely on the custodian forwarding meeting documents to them. As a result, retail shareholders in other jurisdictions may be less likely to attend member meetings.

Further information on other jurisdictions' treatment and experiences of meetings is at Appendix B.

Technology used to hold meetings

Types of technology and functionality

The amendments require that the virtual technology used in a hybrid or wholly virtual meeting be reasonable, including allowing members as a whole to exercise any pre-existing rights they have to ask questions and make comments both verbally and in writing, and to vote.⁶⁰

At roundtable discussions, entities and company representatives noted the technology used to hold a meeting and the quality of the technology will vary, subject to the cost and company's resources.⁶¹ The majority of the ASX300 use meeting services provided by Computershare and MUFG.⁶²

Some virtual meeting technology providers outlined that they offer online platforms that allow members to ask questions in writing and orally, without needing a separate telephone line for oral questions. Audio capability is built into the online platform and does not require any further authentication in a secondary platform or to a phone operator. Some virtual meeting technology providers do require a separate phone line as the capacity to ask questions or make comments orally operates through their conference call facility – this includes the member attending on the online platform which directs the member to the phone line.⁶³

One virtual meeting technology provider elaborated that on the online platform, once members are authenticated to join the meeting, they can join the queue to ask a question orally without further authentication being required and they can continue to hear audio proceedings of the meeting.⁶⁴ The virtual meeting technology provider also outlined that they can provide the ability for any attendee to be brought into the meeting via a live video call. They said that they have not had take up on this technology in Australia, but it has been used at a few meetings in the UK, Europe and South Africa.

59 ASX, *Australian Investor Study 2023*, 2023, ASX website, p 6, accessed 10 August 2024.

60 See Corporations Act, subss 249S(6) to (7) and 252Q(6) to (7), and paragraphs 1.92 and 1.93 of the Revised Explanatory Memorandum to the Corporations Amendment (Meetings and Documents) Bill 2021, pp 19-20.

61 Clubs Australia and GIA at roundtable discussions.

62 Based on information provided by Computershare and MUFG to follow-up questions from the Panel.

63 Lumi submission p 3; information provided by various virtual meeting technology providers in response to follow up questions from the Panel.

64 Lumi submission p 3.

GIA stated that smaller companies, charities and not-for-profits holding hybrid meetings may use platforms such as Zoom, Microsoft Teams and Google Meet. GIA also stated that '[t]hese 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.'⁶⁵

The requirement to allow questions and comments in meetings to be made both verbally and in writing was subject to considerable feedback from stakeholders. These stakeholders stated that this concern is due to a need to provide a telephone line to facilitate the verbal requirement. See the box for further discussion of this requirement.

Provision for a telephone line

A significant proportion of company, share registry and legal counsel representatives raised concerns about providing an established telephone line for hybrid and wholly virtual meetings.⁶⁶ Companies and their representatives stated that a telephone line is considered to be needed to provide the ability to make comments or ask questions verbally at the meeting in accordance with the Corporations Act. These stakeholders stated that the telephone line leads to additional logistical and cost burdens in a hybrid meeting but is either not used or seldom used. Other stakeholders also recognised the lack of use of telephone lines at meetings. The AICD cited one AGM where the cost for a separate telephone line and operator was one-third the cost of the AGM, while Computershare outlined the cost varies from \$500 to \$2,000 a meeting.⁶⁷ Companies and their representatives called for changes to the legislation to remove any need to provide a telephone line.

The Australian Shareholders' Association (ASA) stated that a voice option is advantageous, but not crucial, for a hybrid meeting to replicate a physical meeting. This is because the voice option is part of the deliberative component of an AGM. It allows a question to be voiced and followed-up when the answer is unclear or the question has been misunderstood.⁶⁸ An online meeting provider noted that any online solution should aim to replicate the physical meeting experience, and therefore the capacity to ask questions and make comments orally is important.⁶⁹ Other investor representatives spoke at roundtables about the importance of the online meeting replicating the in-person meeting, with Stephen Mayne stating that 'A true hybrid should allow for unscripted, live questions to the CEO, Chair and Board, which is a better means of testing competence.'⁷⁰

The Panel has investigated the source of the requirement to provide a telephone line as part of a hybrid or wholly virtual meeting. This requirement does not appear in the legislation, but a voice option is historically part of the deliberative aspect of physical member meetings. The telephone line is referenced in the 2022 Act's Explanatory Memorandum as an example of something that could be provided to meet the requirement to allow questions and comments orally. Some virtual technology

65 GIA submission p 5.

66 AICD submission; BCA submission; Company Matters submission; Computershare submission; GIA submission; HSF submission; LCA submission; MUFU submission.

67 AICD submission p 4; Computershare submission p 1.

68 ASA submission p 2.

69 Lumi submission p 3.

70 Stephen Mayne at a roundtable discussion.

providers include voice functionality as part of their existing platforms, without the need for separate phone lines.

The Panel has confirmed with ASIC that it does not consider there is a legal requirement for a telephone line.⁷¹ ASIC confirmed the legislative requirement to allow members a reasonable opportunity as a whole to ask questions and make comments both verbally and in writing is satisfied so long as the virtual technology allows members to exercise their rights both orally and in writing.

ASIC confirmed an example of how the oral and written elements can be satisfied includes the use of an online platform that offers a live voice function and an online chat function.

The Panel further understands from responses from legal practitioners to follow-up questions that to the extent the virtual meeting technology provides for an audio facility which is two-way, then an additional telephone facility is not required.

Technological issues

A number of both company and member stakeholders stated that difficulties with hybrid and wholly virtual meetings can arise due to reliability of, and limitations with, the current technology available to both the company and to members.⁷² The ASA stated that '38 per cent of our members said that they had experienced no issues in attending a meeting with an online component. Of the remainder, our members report minor connectivity internet speed issues, clashes with anti-virus software leading inability [*sic*] of firewall to connect, tech glitches, loss of audio and video.'⁷³ Members' attempts to resolve issues also vary, with '50 per cent of those who encountered problems approached the company for a solution, and 38 per cent accessed the helpline listed in the notice of meeting, whilst 12 per cent approached the company's share registry'.⁷⁴ However, successful dealing with issues also varied: '50 per cent felt their issue was not resolved, 33 per cent felt their issue was fully resolved, and 27 per cent considered their issue partially resolved.'⁷⁵

The Australasian Centre for Corporate Responsibility (ACCR) stated that '[f]or AGMs with an online component, we continue to experience occasional issues with unstable technology, including difficulty submitting questions, and difficulty logging in to online AGM platforms.'⁷⁶ CPA Australia noted that '[s]ome of our members have noted that continued improvement in sound technology would assist with the smooth running of the meetings ... Some of our members have raised a concern that poor video and audio quality can be a discouraging factor.'⁷⁷

ASIC stated that since the temporary measures were introduced in 2020, they received 27 reports of alleged misconduct in relation to virtual meetings. Of these, 8 related to issues with technology.

71 ASIC in response to follow-up questions from the Panel.

72 ASA submission; Clayton Utz submission; CPA Australia submission; Law Society of NSW submission; Wilson Asset Management submission.

73 ASA submission p 7.

74 ASA submission p 7.

75 ASA submission p 7.

76 ACCR submission p 5.

77 CPA Australia submission p 3.

These involved:

- [i]ssues with the meeting link not working
- [a]llegations of inadequate IT infrastructure at the meeting, including some shareholders being unable to hear
- [s]hareholders allegedly being muted, their questions cut off, or technology not allowing shareholders to ask questions of the Board.⁷⁸

The Law Society of New South Wales (Law Society of NSW) stated that:

Our members have described technological issues generally falling into the following categories, although relatively low in occurrence:

- 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.⁷⁹

In contrast, Computershare, the Law Council of Australia Business Law Section (LCA) and MUFG stated that none or few substantive technological issues have been witnessed.⁸⁰ Computershare stated that members and shareholders experiencing difficulties using the online AGM platform could contact the support desk, with the support line being advertised on websites and AGM materials. MUFG stated that their experience has enabled them to develop a process and system with multiple redundancies, and they work with the company to create an online guide for meeting participants to troubleshoot and to access contact centres for support.

GIA observed that younger retail investors prefer using technology, while older retail investors prefer the opportunity to interact with the board and management in-person at the AGM.⁸¹

A separate concern revolves around the more general risks associated with the use of technology by companies. Legal representatives and companies also raised concerns regarding the validity of a hybrid or wholly virtual meeting if the virtual meeting technology failed.⁸² This concern has been heightened by recent events with stakeholders differentiating the heightened risk of a sustained interruption in a hybrid or wholly virtual meeting due to a technological disruption (such as a cyber-attack) as compared to an interruption in a physical meeting.⁸³

Lumi Global (Lumi) stated that '[a]ny technology partner should have multiple layers of redundancy in place to ensure any issues do not affect the online portion of shareholders'⁸⁴ and suggested that '[any technology provider] be subject to very strict data protection and security measures, such as SOC2 Type 2 accreditation and be ISO27001 compliant'.⁸⁵

78 ASIC submission p 6.

79 Law Society of NSW submission p 3.

80 Computershare submission; LCA submission; MUFG submission.

81 GIA submission pp 5-6.

82 NRMA at roundtable discussions; meeting with Simon Pordage, ANZ Company Secretary.

83 Meeting with Simon Pordage.

84 Lumi submission p 4.

85 Lumi submission p 2.

Concerns about meeting validity in a technological disruption

The National Roads and Motorists' Association Limited (NRMA) queried whether the new requirement for members attending a meeting via virtual technology to, as a whole, be able to ask questions and make comments both verbally and in writing creates an additional obligation beyond the pre-existing requirement for members to, as a whole, have a reasonable opportunity to participate.⁸⁶ NRMA stated that this leads to practical issues, where for example whether a hybrid meeting could continue where the virtual technology failed but only a very small proportion were participating virtually.

In a roundtable discussion with the Panel, NRMA was also concerned about a loss of quorum at a meeting where most, if not all, members are attending via virtual meeting technology. NRMA was concerned that a loss of quorum could affect the chair of the meeting's ability to validly adjourn it.⁸⁷ NRMA stated they mitigated this risk by co-locating a sufficient number of members with the chair to ensure a quorum remained in the event of a technological failure, allowing the chair to validly adjourn immediately after the technological failure.

On the issue of valid actions by the chair, other stakeholders stated that the chair has inherent powers to adjourn the meeting to another time or date to properly facilitate member participation or that section 1322 of the Corporations Act, which allows a meeting to remain valid unless the Court determines otherwise, could be relied upon.⁸⁸ The AICD also noted it is standard practice for companies to have contingency plans to address technological issues, for example with the chair adjourning the meeting until the issue is resolved. The AICD cited the now withdrawn ASIC guidelines for investor meetings using virtual technology⁸⁹ and joint guidance issued by GIA, AICD, Australasian Investor Relations Association (AIRA) and LCA.⁹⁰

Costs of holding meetings

Few submissions to the review contained detailed information about the effect of the amendments on the costs of organising and holding members' meetings.

Company and legal counsel representatives stated that wholly virtual meetings reduce costs relative to in-person meetings.⁹¹ At a roundtable discussion, NRMA indicated that virtual meetings cost under \$50,000 to host (although this can vary depending on the meeting's business). NRMA has 2.8 million members and indicated during a roundtable discussion that around 25 to 100 typically members attend meetings.⁹² Separately at a roundtable discussion, GIA indicated that not cost but managing risk is the driving force when deciding on the format of the meeting.

Company, share registry and legal counsel representatives and other stakeholders representing the company's perspective stated that hybrid meetings are expensive to hold as they must cover both the physical location (including venue hire, catering, security and travel) and the virtual meeting

86 NRMA submission p 1.

87 NRMA at roundtable discussion.

88 AICD and LCA at roundtable discussion; meeting with Catherine Livingstone, former chair of Commonwealth Bank of Australia.

89 ASIC, *ASIC guidelines for investor meetings using virtual technology*, 2021, ASIC website, accessed 8 August 2024.

90 GIA, AICD, AIRA & LCA, *Electronic governance reforms: Meetings and documents* [pdf 0.9MB], 2022, AICD website, accessed 8 August 2024.

91 Clubs Australia submission; CPA submission; Queensland Law Society submission.

92 NRMA, *About*, NRMA website, accessed 2 August 2024; NRMA at roundtable discussion.

technology (including the virtual platform, technical support and governance resources to ensure compliance).⁹³ The GIA stated that this increases costs more than the cost of purely in-person or virtual meetings. GIA provided an example of an ASX 200 company where the AGM costs rose by approximately \$15,000 or 33 per cent because the company holds a hybrid meeting.⁹⁴ At a roundtable, Ownership Matters noted the cost of holding a hybrid meeting was supported by members, given it utilises member funds to facilitate the exercise of member rights.⁹⁵ MUFG observed that as virtual meeting technology develops and becomes an industry standard, costs have plateaued and they can tailor the service to align with clients' budgets. The Law Society of NSW remarked that there are likely to be cost reductions in hybrid meetings.

Wilson Asset Management stated that it has 'invested in [the hybrid] format and committed to the increased cost on a yearly basis' to engage with their over 130,000 members.⁹⁶ Wilson Asset Management noted it financed '... a comprehensive, easy-to-use online platform that allows shareholders to access company meetings both in-person and virtually, provides access to electronic information, and enables shareholders to ask questions of the Board and investment manager remotely and at ... the physical venue location.'⁹⁷

Clayton Utz noted that the amendments 'have shifted company expenses from traditional paper-based communications (such as paper acquisition, printing, and distribution), towards costs investing in technologies necessary for conducting meetings online. Even though the effects of the Amending Acts may not have had an overall net change in the total costs for entities in conducting members' meetings, they have facilitated a significant reallocation of resources that supports a more modern, inclusive, and responsive corporate governance environment'.⁹⁸ Clayton Utz also noted that these costs for companies in the ASX201-500 could be a factor in their move to physical meetings.⁹⁹

Groups representing not-for-profits and non-share-based companies stated that their members can benefit from the lower cost of the use of virtual meeting technology, with many smaller not-for-profit using existing video meeting technologies such as Zoom.¹⁰⁰

This is particularly the case for companies with a large or dispersed membership. These companies are often more resource constrained than other companies. Richmond Football Club stated at a roundtable discussion that the costs are reasonable for virtual meetings.¹⁰¹ However, in the context of not-for-profits, Clubs Australia stated that a shortage of providers who can adequately facilitate meetings with virtual meeting technology means fees can be excessive.¹⁰²

93 AICD submission; AIRA submission; Clubs Australia at roundtable discussion; Law Society of NSW submission; LCA submission; Woodside submission.

94 GIA submission p 15.

95 Ownership Matters at a roundtable discussion stated: 'it is a small insurance policy that shareholders are happy to pay for'.

96 Wilson Asset Management submission p 2.

97 Wilson Asset Management submission p 2.

98 Clayton Utz submission p 8.

99 Clayton Utz submission p 8.

100 Clubs Australia at roundtable discussion.

101 Richmond Football Club at roundtable discussion.

102 Clubs Australia submission p 4.

Reasonable opportunity for members to participate and transparency to members

The member response to the amendments consistently noted that attending a meeting via virtual technology does not replicate the in-person experience. In the ASA's survey of their members' experience with AGMs due to the amendments, 40 per cent of respondents felt their experience had improved, 20 per cent felt their experience was similar to other meeting formats and, 27 per cent felt their experience had worsened.

Those who reported a worse experience drew attention to three problems: member questions not being answered with no possibility of follow-up (exacerbated in virtual AGMs); companies moderating written questions before answering them; and the limited ability to ask real-time questions. The ASA noted that, with technology expected to evolve, they hope all meeting participants would be able to see queued questions and to vote on which questions they would like answered.¹⁰³

The majority of member representative stakeholders raised concerns that companies are deploying tactics to limit participation by members attending the meeting virtually, by taking advantage of the use of technology to avoid scrutiny. These stakeholders said they had observed behaviours with the use of virtual technology which included:

- pre-registered questions being the only way to ask questions for virtual attendees
- questions and/or follow up comments and questions being ignored
- questions being misconstrued, omitted, rephrased or reinterpreted
- questions being aggregated and answered with a single broad and generic response
- imposing question limits or the time for questions (either per person or per agenda item)
- directors and auditors being unavailable for questions
- little or no opportunity for members to interact with other directors aside from the chair
- virtual attendees being limited to audio-only participation.¹⁰⁴

Lumi stated in its submission that '[p]hysical attendees are not asked to register their intent to ask a question days before the meeting, it is therefore incongruous to ask that of virtual participants.'¹⁰⁵

Stephen Mayne provided seven examples of meetings in 2022 to 2024, saying that his questions were ignored, edited or re-worded.¹⁰⁶

At a roundtable discussion Ownership Matters noted that the censorship of questions in a wholly virtual meeting extends to questions to the auditor, with the moderator excluding questions that the auditor cannot see.¹⁰⁷

103 ASA submission p 3.

104 ACCR submission; ACSI submission; Stephen Mayne submission; Wilson Asset Management submission.

105 Lumi submission p 3.

106 Stephen Mayne submission pp 9-11.

107 Ownership Matters at roundtable discussion.

Some stakeholders particularly noted increased member engagement and broader participation via virtual meeting technology due to increased accessibility regardless of location and removal of barriers relating to time, cost and distance of meetings.¹⁰⁸ This appears to be supported by ASA's survey of their members, which indicated that 40 per cent of respondents felt their experience attending AGMs had improved.¹⁰⁹

In follow-up questions to the ASA from the Panel regarding behaviours in relation to virtual meeting technology raised by member stakeholders, the ASA responded that:

- they have only seen pre-registered questions being the only way to ask questions for virtual attendees where virtual attendees are watching a webcast of the meeting (i.e. these are a physical meeting and not a wholly virtual or hybrid meeting)
- ASA company monitors similarly considered that some of their questions or follow-up comments and questions were not addressed. ASA added that they have also experienced the effect of a video lag where the company addressed their question after closing comments on a topic. ASA had lodged the question before the agenda item was reached, but the company either didn't receive them or had not realised they had been received until the topic was over
- on limits to the number of questions, ASA guidelines permit limiting questions per agenda item to two per person, to allow more members to speak, with the expectation members can return to ask questions after all members have asked their two questions. The ASA noted the chair should manage duplicated questions, but the chair should not use this to stifle enquiry.
- on limits to the time for questions, no time is specified, but members and proxy holders are asked to make questions rather than make a comment
- in relation to directors being unavailable for questions, questions directed to specific directors were answered by the chair
- the ASA provided a couple of examples of AGMs where virtual attendees were limited to audio-only participation
- members cannot interact with directors or the chair through virtual meeting technology, and in physical meetings, some directors immediately leave following the conclusion of formal business.

Of the 27 reports of alleged misconduct stated earlier that ASIC had received in relation to virtual meetings, 25 were prior to the 2022 amendments, and 2 were after.¹¹⁰ The reports received were from multiple sources, including members, directors, industry stakeholders and advisers.

Some of the behaviours outlined above have also been observed in physical meetings. ASIC stated that while the reports involved hybrid or wholly virtual meetings, the issues raised may not have directly related to the use of virtual meeting technology and many concerns were similar to reports received about physical meetings.¹¹¹ The GIA noted poor conduct can occur at physical meetings.¹¹²

108 Clayton Utz submission; Computershare submission; Lumi submission.

109 ASA submission pp 5-6.

110 ASIC submission pp 6-7.

111 ASIC submission p 5.

112 GIA submission p 2.

AICD noted that retail shareholders are submitting more questions over the live chat function.¹¹³ In a roundtable discussion, NRMA said hybrid and wholly virtual meetings provide a good opportunity to participate and they regularly receive a number of questions from those participating virtually. Clayton Utz stated that a significant outcome of the amendment has been an observable increase in accessibility and participation in meetings.¹¹⁴

The ACCR stated that ‘... companies have often “... been more concerned with the performative optics of a virtual meeting than in providing shareholders with a reasonable opportunity to question the board”’.¹¹⁵ Wilson Asset Management stated that ‘Virtual meetings in their current state often act as a one-way communication exercise for company management to shareholders.’¹¹⁶

However, various company and share registry stakeholders reported no observable difference in member participation.¹¹⁷

Members obtaining information

Transparency of companies to their members has also changed over time. AICD, Computershare, GIA and LCA stated that the role of the AGM needs to be considered in the broader environment, stating that the board and management have other forums and mechanisms to disclose information to members.¹¹⁸ The LCA noted the ‘vastly increased information resources through continuous disclosure (for disclosing entities at least)...’ to markets.¹¹⁹ Computershare also noted that the continuous disclosure regime provides timely information.¹²⁰ Companies also provide broadcasts and information sessions throughout the year ahead of the AGM.¹²¹

The AGM is not self-evidently a disclosure-based regime but rather a method of discourse between members and the company with deliberative and accountability features that are not capable of being replaced by the development of alternate disclosure mechanisms such as those raised by AICD, GIA and the LCA in their submissions.

113 AICD submission p 6.

114 Clayton Utz submission p 8.

115 ACCR submission p 4.

116 Wilson Asset Management submission p 3.

117 Computershare submission; GIA submission.

118 AICD and LCA at roundtable discussions; Computershare submission; GIA submission.

119 LCA submission p 2.

120 Computershare submission p 6.

121 AICD submission; GIA submission; LCA submission.

Trends in member attendance and voting

Attendance by members

Both company and member stakeholders expressed the view that the amendments have led to increased attendance, although this was more noticeable during the COVID-19 pandemic than after the pandemic.¹²² The degree to which the amendments have since improved member attendance is disputed. It is important to distinguish a member's right to attend meetings from that member's participation rights, which incorporate the additional elements of member deliberation and stakeholder accountability.

Based on the stakeholder feedback, while attendance overall at AGMs is declining, anecdotally, hybrid or wholly virtual meetings may provide more avenues for attendance.¹²³ The GIA stated that their 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.'¹²⁴

Ongoing low attendance at AGMs was also noted by AIRA and MUFU,¹²⁵ whereas AICD noted that 'physical attendance by retail shareholders at AGMs has decreased since the COVID-19 period. However, those companies in... the ASX listed...that have convened hybrid or wholly virtual meetings have cited increased attendance'.¹²⁶ AICD attributes this to the removal of 'geographic and physical barriers to attendance'.¹²⁷ Wilson Asset Management stated that they have seen an increase in attendance at their AGMs since beginning to hold hybrid meetings in 2020, notably through virtual attendance.¹²⁸ In contrast, Herbert Smith Freehills (HSF) stated that early data suggests that 'there have not necessarily been more shareholders attending online AGMs or asking questions online.'¹²⁹ HSF state that this is similar to the experience in the UK where offering electronic attendance has not increased turnout or participation.

Dr Boros and others¹³⁰ opine that the causes of member attendance apathy have nothing to do with the format of company meetings but in fact reflect the fact that widely dispersed shareholdings make members rationally apathetic with the outcome of meetings generally determined by proxy votes lodged in advance of the meeting by institutional shareholders.¹³¹ Retail shareholders are also unlikely to be able to attend meetings because meetings are typically held on weekdays during business hours and/or they don't live in the city where the meetings are being held. General meetings are also poorly attended by institutional shareholders in part because they regard direct contact with management and routine analyst briefings as more effective methods of reasonable influencing governance and business of companies in their portfolio.

The relevance of the role and purpose of the general meeting of members was questioned at times by company representatives due to declining member attendance. The Panel's terms of reference relate to whether changes to the operation of company meetings fulfil the role and purpose as set out in the Corporations Act rather than consideration of whether the role and purpose of members' meetings should change.

Respondents to ASA's survey of members cited virtual meeting technology provided the ability to attend more AGMs and attend AGMs they otherwise would not have been able to due to geographic limitations.¹³² Stephen Mayne noted at a roundtable discussion that retail shareholder attendance is low, but that hybrid meetings are efficient for members who do attend. He noted he can attend eight meetings a day.¹³³

However, it is to be observed that the members were commenting on the ease of attending meetings rather than their participation in those meetings.

Trends in member attendance and voting (continued)

Many stakeholders considered the usage of hybrid and wholly virtual meetings has not caused any significant changes to the rate of voter participation. Computershare stated that the main beneficial change offered by the hybrid format was the introduction of online voting and noted the adoption of digital communications has seen an increase in proxy voting online.¹³⁴

The ASA and Stephen Mayne stated that the move away from paper proxy forms with reply paid envelopes by companies has discouraged retail shareholder voting participation.

Stephen Mayne noted at a roundtable discussion that the use of webinars by listed companies as the technological component of meetings means that no voting capability is provided.

Not-for-profits

The AICD noted that companies in the not-for-profits sector that convened hybrid or wholly virtual meetings have cited increased attendance due to the removal of geographic and physical barriers.¹³⁵ The AICD provided an example that 'one [not-for-profit] entity operating in the Northern Territory advised the AICD that the [a]mendments had enabled their AGM to be convened wholly virtually, connecting members and the board situated across various remote locations. Had a physical meeting (or physical component of a meeting) been required, attendance and participation by members and the board would not have been as high.'¹³⁶

The LCA stated there is increased member participation at the AGMs of not-for-profits.¹³⁷ Similarly, in a roundtable discussion, Clubs Australia stated its members provided feedback that hybrid meetings have increased participation, transparency and exposure to club affairs. In the roundtable discussion, Richmond Football Club also said they have seen increased member attendance and participation as a result of having hybrid and wholly virtual meetings, but noted overall attendance remains low.

122 ABA submission; AICD submission; MUFG submission; Wilson Asset Management submission.

123 For example, see ABA submission.

124 GIA submission p 3.

125 AIRA submission; MUFG submission.

126 AICD submission p 2.

127 AICD submission p 2.

128 Wilson Asset Management submission p 2.

129 HSF submission p 2.

130 See DR Cole, 'E-Proxies for Sale? Corporate Vote-Buying in the Internet Age', 2001, *Washington Law Review* website 76(3), p 793; Company Law Review Steering Group, *Modern Company Law for a Competitive Economy: Company General Meetings and Shareholder Communication*, 1999, Department of Trade and Industry, United Kingdom, pp 18-22; BCA, *Getting Value from AGMs*, 2003, BCA website, accessed 10 August 2024; BCA, *General Meetings — Code of Conduct*, 2003, BCA website, accessed 10 August 2024; and, Investment and Financial Services Association, *Shareholder Activism among Fund Managers: Policy and Practice*, 2003, p 15; all cited in Elizabeth Boros, 'Virtual Shareholder Meetings: Who Decides How Companies Make Decisions?', 2004.

131 Elizabeth Boros, 'Virtual Shareholder Meetings: Who Decides How Companies Make Decisions?', 2004.

132 ASA submission pp 5-6.

133 Stephen Mayne at roundtable discussions.

134 Computershare submission p 3.

135 AICD submission p 3.

136 AICD submission p 6.

137 LCA submission p 4.

Stakeholders have different views on meeting format

Companies and their representatives prefer flexibility

The ASX stated that the changes allowing a technology-neutral approach to meetings, including the option to hold a physical, hybrid or wholly virtual meeting are 'an accepted and permanent part of the corporate governance landscape.'¹³⁸ Regulatory arrangements that ensure the efficiency, flexibility, transparency and investor confidence in corporate governance arrangements in Australian companies, coupled with appropriate safeguards to protect members rights, ensures that Australia remains an attractive location to list and invest.¹³⁹

Submissions by ASX, industry bodies representing directors and businesses, legal counsel and share registry representatives generally stated that they prefer the company to have the flexibility to be able to determine the meeting format that they consider best reflects the needs and circumstances of both the company and its members.¹⁴⁰ GIA and LCA emphasised that the board and management are subject to duties of diligence and good faith, which would include meeting conduct, and should condition their behaviour at meetings.¹⁴¹ They consider the management and the board as best positioned to choose the format of the meeting, consider how to best engage with their members, the costs of the meeting and the available resourcing of the company. The company may also consider other circumstances such as security concerns and the impact on the board, management and retail investors at a physical meeting.¹⁴²

Greater flexibility for companies to decide the format of a meeting, and greater use of wholly virtual meetings would allow them to better manage these risks. The GIA noted in its submission that companies in the financial services, mining and energy sectors routinely engage security staff at their in-person meetings. The GIA also noted that hybrid 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.¹⁴³

The common thread here is the focus on the convenience and efficiency needs of the company and the company's unique suitability for determining what is the best meeting format for engaging with its members. This viewpoint does not acknowledge a member's existing legal right to have a say in the format of the meeting at least in so far as the proposal is to have a wholly virtual meeting. This is a right enshrined by sections 249R(c) and 252P(c) of the Corporations Act, which requires an amendment to the company's constitution to specifically allow for wholly virtual meetings. This power in effect requires the consent of 75 per cent of all members for a company to host wholly virtual AGMs.

¹³⁸ ASX submission p 2.

¹³⁹ ASX submission p 1.

¹⁴⁰ ABA submission; AICD submission; AIRA submission; ASX submission; BCA submission; Company Matters submission; GIA submission HSF submission; LCA submission; Lumi submission; MUFG submission.

¹⁴¹ GIA submission; LCA submission.

¹⁴² AICD submission; Computershare submission; GIA submission; HSF submission.

¹⁴³ GIA submission p 4.

Not-for-profit entities, membership associations and other companies limited by guarantee with large member bases

AICD, Clubs Australia, GIA and NRMA stated that the flexibility to hold meetings using virtual technology was beneficial for not-for-profit entities, membership associations and other companies limited by guarantee with large member bases.¹⁴⁴ This was particularly advantageous where the members may be geographically dispersed across Australia or may be in remote areas.¹⁴⁵ As indicated above, Clubs Australia, Richmond Football Club and NRMA stated the ability to hold hybrid or wholly virtual meetings has helped to increase attendance and participation.

Member representatives generally prefer hybrid meetings over wholly virtual meetings

Bodies representing member interests consider the AGM to be a key governance mechanism, particularly for publicly listed companies.¹⁴⁶ The Australian Council of Superannuation Investors (ACSI) stated that 'AGMs are one of the key mechanisms for supporting accountability and transparency. Shareholders provide capital to companies and should be able to exercise the associated rights and responsibilities. The AGM is therefore not a distraction to the company's activity, or an unnecessary expense, rather it is a key governance mechanism.'¹⁴⁷

Bodies representing member interests generally preferred meetings to be held in a hybrid format, with some stakeholders stating that hybrid meetings be made mandatory for publicly listed companies.¹⁴⁸ These stakeholders expressed a distrust of wholly virtual meetings, at least for publicly listed companies, due to concerns that they did not presently fully replicate the experience of an in-person meeting and did not enable members to properly participate in meetings, engage with the board and management and hold them to account. This was due to their experiences where members considered companies were deploying tactics to limit participation (discussed above), and they are particularly concerned that the board and management can use wholly virtual meetings to further limit participation. Wilson Asset Management emphasised that 'it is imperative that technology is used in a way that promotes accountability through greater visibility and transparency – and does not disenfranchise individual shareholders'.¹⁴⁹ Wilson Asset Management stated that '[r]etail investors already face disadvantages in accessing company management. ... Removing the in-person component of company meetings denies retail shareholders one of the last remaining opportunities to hold management teams and Boards to account.'¹⁵⁰

However, these bodies recognised that wholly virtual meetings may be needed in exceptional circumstances such as another pandemic.

144 AICD submission; Clubs Australia submission; GIA submission; NRMA at roundtable discussions.

145 Clubs Australia submission p 2, NRMA at roundtable discussions.

146 ACSI submission; see also ASA submission p 1 for comments concerning retail shareholders.

147 ACSI submission p 1.

148 ACCR submission; ACSI submission; ASA submission; Ownership Matters submission; Stephen Mayne submission; Wilson Asset Management submission.

149 Wilson Asset Management submission p 1.

150 Wilson Asset Management submission p 4.

The ASA stated that members' experiences with meeting formats have varied subject to the specific company and suggested that companies should more clearly communicate the format to members. The ASA cited an example where a company's message of an 'online' option to participate in an AGM, has been taken to enable online participation, yet the meeting involved a passive watching of a webcast.¹⁵¹ Similarly, Stephen Mayne provided examples of several companies providing webcasts but not allowing voting, questions or comments.¹⁵²

Clayton Utz stated that 'While online meetings can serve specific needs and offer logistical benefits, the overarching objective for many companies remains to facilitate meaningful participation and ensure robust governance. Thus, the choice of meeting format should be strategically aligned with the goal of enhancing shareholder engagement and governance quality, rather than merely simplifying administrative processes.'¹⁵³

Specific constitutional permission to allow wholly virtual meetings

There are differing views on the flexibility for companies to decide meeting format and the use of wholly virtual meetings.

Companies were permitted to hold wholly virtual meetings at their discretion under the temporary COVID-19 instruments and the 2021 Act. The 2022 Act introduced a requirement that wholly virtual meetings must be required or permitted by the company's constitution. This change has highlighted the differing views of companies and their members in publicly listed companies on the flexibility for entities to decide meeting format and has affected the use of wholly virtual meetings.

ASIC stated that some companies that have held wholly virtual meetings since 2022 may not have had constitutions that expressly permitted meetings to be held using virtual meeting technology only, or if they did, the relevant notification forms and amendments were not lodged with ASIC. ASIC has written to these companies.

Company, share registry and legal counsel representatives, including not-for-profit and large member-based organisations stated that the requirement for a constitutional amendment to allow a wholly virtual meeting is an unnecessarily high barrier and should be abolished.¹⁵⁴ ASX noted that companies and newly listed companies prefer flexibility, with newly listed companies preferring to have optionality in their constitutions to allow for flexibility in meeting format, optionality indicating a possible choice of physical, hybrid or virtual meetings from one year to the next.¹⁵⁵ This optionality may in due course provide a case study of the responsible use of wholly virtual meetings but given the current scarcity of new listings on the ASX, it is too early to draw definitive conclusions as to the appropriateness of these practices for corporate and member interests.

151 ASA submission p 4.

152 Stephen Mayne submission p 3.

153 Clayton Utz submission p 10.

154 AICD submission; AIRA submission; Clubs Australia submission; Company Matters submission; GIA submission; Woodside submission; NRMA at roundtable discussions.

155 Meeting with ASX.

In a roundtable discussion, Ownership Matters stated that proposals for constitutional changes were the second most contentious item of business after the remuneration report for listed companies.¹⁵⁶ In the case of large publicly listed companies, negative responses by proxy advisers and institutional investors to resolutions for a constitutional amendment have led to the resolution being withdrawn or voted down.¹⁵⁷ ACSI noted that ‘The concerns with wholly-virtual meetings outlined above have resulted in a lack of investor support for such amendments.’¹⁵⁸

Institutional investors do not generally attend AGMs, but ACSI noted they prefer to retain the ability to attend a meeting in-person for any important decisions. This was also noted by Ownership Matters at a roundtable discussion.

ACSI stated that, since 2020, members ‘have consistently opposed proposals to permanently enshrine wholly-virtual AGMs within listed entity constitutions.’¹⁵⁹ ACSI also reported that, between 2020 and 2023:

- 11 ASX300 companies withdrew resolutions put forward to allow wholly virtual meetings
- 9 ASX300 companies amended or removed the wholly virtual meetings component of resolutions
- 18 ASX300 companies voted down resolutions to allow wholly virtual meetings.

ACSI stated that ‘some proposals have passed, and there remains the option for entities to include the relevant provision in their constitution upon initial public offering.’¹⁶⁰ ACSI states it is concerned that this goes against investor concerns about wholly virtual meetings and creates a possibility of derogation of member rights over time. This concern about newly listed companies is shared by Ownership Matters.¹⁶¹

Research conducted by Treasury for the Panel and data provided by Clayton Utz shows a significant share of new listings on the ASX over recent years whose constitutions permit wholly virtual meetings. Clayton Utz’s data shows that this has increased from around 25 per cent of new listings in 2020 and 2021 to 80 per cent in 2023 (noting that the number of new listings in 2023 was low).¹⁶² Similarly, Treasury’s research shows 73 per cent of new listings by Australian companies in 2024 (up to 21 June) included provisions to allow wholly virtual meetings (again off a low number of listings). Clayton Utz attributes this change to the certainty provided by the 2022 amendments.¹⁶³

Not-for-profits and large member-based companies limited by guarantee stated that the costs and time needed to pass a special resolution are prohibitive or high, unless they are already making a constitutional change.¹⁶⁴

156 Comments made by Ownership Matters during roundtable.

157 AICD submission; HSF submission.

158 ACSI submission p 2.

159 ACSI submission p 2.

160 ACSI submission p 3.

161 Ownership Matters submission p 1.

162 Clayton Utz submission p 26.

163 Clayton Utz submission p 26.

164 AIRA submission p 2; Clubs Australia and NRMA at roundtable discussions.

Findings and Recommendations

The Panel is of the view that the AGM and other members' meetings continue to be important forums for management to communicate and interact with members, and for members to exercise their rights, hold the board, management and the auditor to account, and be involved in decisions concerning company business. Other mechanisms to disclose information to members are no substitute for the deliberative forum of a meeting where members can exercise their rights by directly asking questions and making comments and the opportunity presented by a meeting for members to conclusively exercise their rights by voting.

In the case of publicly listed companies, members' meetings are important for members of these companies to exercise their rights. These companies are funded by members contributing their capital on the public market, and the membership can be diverse and widespread. They are accordingly subject to more obligations, such as the ASX Listing Rules and laws that specifically apply to listed companies in the Corporations Act.

Members' meetings are valued by both retail investors and institutional investors to exercise their rights. The board and management similarly value the opportunity to interact with members.

For retail investors, the AGM is the notable point in the annual calendar to be informed of the company's performance and to have the opportunity to engage with the board and management. Institutional investors may have the ability to access the board and management and to influence decisions outside of the AGM context. However, institutional investors similarly continue to place value on the AGM and other members' meetings, and the decisions taken at them, such as on schemes of arrangement, directors' appointments and director remuneration. Accordingly, institutional investors may wish to attend AGMs or other formal members' meetings for these particularly important resolutions.

Internationally, jurisdictions commonly allow the use of wholly virtual and hybrid meetings. In this international context, together with the objective to support the efficient and effective operation of Australian companies and capital markets, the Panel considers that wholly virtual meetings and allowing further technological evolutions through technology neutral laws is beneficial.

At the same time, the board and management continue to have a responsibility to their members to ensure they do have a reasonable opportunity to participate in meetings and hold the board, management and auditor to account. The board and management in making decisions about the meeting format, may weigh up their costs and resourcing, but should also be conscious of what their members prefer to ensure they can exercise their rights, as members have contributed capital to the company. From the concerns presented by members and their representatives, it appears there is more that the board and management of listed public companies could do to ensure members feel that they are able to exercise their rights with confidence during a virtual meeting and to make members more comfortable with the use of technology. Similar concerns were not raised by stakeholders of unlisted public companies. The discussion of phone line technology raises an apprehension that boards and management are not sufficiently familiar with the existing functionality of the meeting technology platforms in the marketplace, which amongst other functions, obviate the need for separate phone technology. Accordingly, in the absence of a strong sense of shared understanding and confidence in virtual meetings by listed companies and their members, appropriate member protections continue to be required.

The Panel does not consider that mandating any particular meeting format (such as a hybrid meeting) is appropriate and should continue to be left to the companies and their members. If the requisite majority of members wish for hybrid meetings for a particular company, they could amend their constitution accordingly.

The Panel notes that ASIC stated it could consider whether further guidance on wholly virtual meetings is necessary following any recommendations from the Panel's review or developments in industry practice. The Panel notes that the AICD stated that it, together with other bodies, are considering the development of updated guidance that reflects learnings and better practice since the amendments, and the GIA stated that it, and its members, are willing to work with key stakeholders to develop appropriate guidance. The Panel further notes the ASX Corporate Governance Council had been consulting on a proposed fifth edition of the *Corporate Governance Council Principles and Recommendations*, which includes guidance for listed companies on facilitating member participation in hybrid and wholly virtual meetings.¹⁶⁵

The Panel notes the feedback received on the difficulties of achieving 75 per cent in favour to change the constitution to require or permit a wholly virtual meeting. The constitution establishes and maintains the relationship between the company and its members. A successful special resolution to change the constitution is the ultimate manifestation of the members exercising their rights in the company. Removal of the legislative requirement for a constitution to allow a wholly virtual meeting would thereby be a loss of a member's right.

In the case of an unlisted public company, after weighing up the relevant considerations, the Panel does not consider that the legislation should require a constitutional amendment for an unlisted public company to hold wholly virtual meetings. The Panel has heard feedback that unlisted companies are providing in their constitutions for the optionality to have a wholly virtual meeting, rather than excluding physical or hybrid meetings. If the company becomes listed, subject to member preferences, the members could pass a special resolution to amend the constitution to prevent the company from holding wholly virtual meetings.

Other entities, such as not-for-profits and companies limited by guarantee are not on the public market seeking capital and have objectives usually different to publicly listed companies. The Panel heard that the legislative requirement for the constitution to require or permit a wholly virtual meeting presents a prohibitive obstacle to enable a wholly virtual meeting. This is particularly when weighed against the cost and time required to amend the constitution. Similarly, proprietary companies have a smaller member base, do not seek capital on the open market and are not required to hold AGMs. Requiring their constitutions to be amended introduces costs with little upside benefit from increased member control.

The Panel also received feedback that technological improvements are required to provide a more seamless experience for members to participate via the virtual meeting technology in a hybrid or wholly virtual meeting. The Panel consistently received feedback to remove an apparent legislative requirement for a phone line, that this was leading to hybrid meetings being expensive, and for that reason stakeholders suggested removing the right for members to participate in meetings orally via the virtual meeting technology. However, the Panel has concluded that there is no such legislative requirement and no action needs to be taken. The Panel also heard that many technology providers already offer their clients the possibility of an online platform that allows members to ask questions

¹⁶⁵ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations Fifth Edition Consultation*, 2024, ASX website, accessed 10 August 2024.

or make comments over an online chat and online voice option, without need for a separate telephone line.

The Panel finds that:

- Companies and their members are still transitioning to the use of virtual meeting technology. The use of technology has been welcomed by most stakeholders, at least for hybrid meetings, but concerns remain about the benefits of wholly virtual meetings, particularly for listed public companies. Companies, their members and their advisers may need more time to become adept with the new technology and learn from best practice examples of its use and development over time.
- Companies' communications with their members about meetings should make it clear what the format is and what technology is being provided to allow for participation. The Panel is concerned about the use of physical meetings with a webcast that does not allow for virtual participation and the potential misconceptions by members that these are hybrid meetings.

Recommendation 1

The Panel recommends to the Government that no legislative change be made in relation to the meeting formats available for listed public companies and listed registered schemes. That is, listed public companies and listed registered schemes should be allowed to hold a wholly virtual meeting only if to do so is permitted in their constitution.¹⁶⁶

Recommendation 2

The Panel recommends to the Government that other entities, such as proprietary companies, unlisted public companies, unlisted registered schemes, not-for-profits and companies limited by guarantee, should be permitted to determine the appropriate meeting format. For those companies, there should be no statutory requirement of constitutional permission before a wholly virtual meeting may be held.¹⁶⁷

¹⁶⁶ The Panel notes that the current requirement for a constitutional provision permitting the company to hold a wholly virtual meeting would not prevent adoption of a constitutional prohibition on wholly virtual meetings, if that is what the requisite majority of members wish.

¹⁶⁷ The Panel notes that under this recommendation, an entity is not prevented from adopting a constitutional prohibition on wholly virtual meetings, if that is what the requisite majority of members wish.

Recommendation 3

The Panel recommends to the Government that entities such as ASIC, ASX and other bodies which provide guidance on matters of corporate governance should consider publishing recommended standards to be adopted by listed public companies, to give members confidence that if they support a constitutional amendment to permit wholly virtual meetings, their company will not engage in practices that were the subject of complaints by some members in submissions to the Panel. This should give members some confidence that they can support a special resolution to permit wholly virtual meetings in their company without putting themselves at risk that their company's management will compromise their basic member rights. Standards should address matters such as using technology to replicate the in-person experience, how the chair engages with members in a virtual setting, how questions are taken and managed, how questions are displayed to members and whether the company will appoint an independent supervisor of the processes adopted by the company for voting and handling questions at members' meetings.

Recommendation 4

The Panel recommends to the Government that a review of the formats of AGMs and other members' meetings be undertaken in 5 years' time. This would provide opportunities to observe how the conduct of meetings has evolved during the transition and whether any significant issues have arisen. The future review could consider whether the present requirement of constitutional permission for a wholly virtual meeting remains appropriate. This would also allow time for:

- members to develop confidence that companies will hold meetings that enable them to participate and vote in the meeting
- companies to better investigate member experiences and develop mutually agreed ways to mediate those concerns and to demonstrate responsiveness that will reinforce trust by members and co-operation between members and management in the virtual meeting process
- technology to further improve and companies to gain a better understanding to allow companies to provide members with a more seamless real-time experience to participate and vote at meetings
- companies to better communicate with their members to manage expectations about the meeting format and ensure members can reasonably participate and vote in meetings.

Voting methods and scrutiny

Effect of the amendments

Voting on resolutions at the meeting is the conclusive way for members to express their view of the propositions put to them by the company or other members and a tool to influence company decisions. As part of members having a reasonable opportunity to participate in meetings (including via virtual meeting technology), this includes members being able to exercise their voting rights.¹⁶⁸ The 2022 Act introduced changes to voting methods and voting scrutiny by:

- Requiring the resolutions set out in a meeting notice of a listed company, and certain other resolutions, to be voted on by a poll rather than a show of hands.
- Allowing certain members of companies to request the company to appoint an independent person to observe and/or scrutinise and prepare a report on the outcome of a poll at a members' meeting.

Voting via a poll

The default method to vote on company member resolutions is by a show of hands, unless a poll is demanded.¹⁶⁹ For registered schemes, special or extraordinary resolutions must be voted on via a poll, with other resolutions required to be decided by a show of hands, unless a poll is demanded.¹⁷⁰

The 2022 Act amended the Corporations Act to require a listed company to decide votes on a resolution at a meeting of members by poll, if certain conditions are satisfied.¹⁷¹ This requirement is not a replaceable rule and cannot be replaced in the constitution. Similarly, for listed registered schemes, the 2022 Act amended the Corporations Act to require voting by poll, provided that certain information is set out in the notice.¹⁷²

Independent scrutiny and reports on polls

The 2022 Act also amended the Corporations Act to allow the members of a company to obtain additional scrutiny and assurance of polls. Members with at least 5 per cent of the votes may ask the company to appoint an independent person to observe the conduct of the poll and prepare a report on the poll.¹⁷³

These requirements exist in addition to the ability under the ASX Listing Rules for ASX to request the auditor or a person that ASX has approved to be appointed to scrutinise votes.¹⁷⁴

168 See Corporations Act, ss 249S(6) to (7) and 252Q(6) to (7), and paragraphs 1.92 and 1.93 of the Revised Explanatory Memorandum to the Corporations Amendment (Meetings and Documents) Bill 2021, p 19-20.

169 Corporations Act, s 250J(1).

170 Corporations Act, s 253J(1) and 253J(2).

171 Corporations Act, s 250JA.

172 See Corporations Act, s 253J(1A).

173 See Corporations Act, Part 2G.7.

174 Rule 14.8 in ASX, *ASX Listing Rules*, 2019, ASX website, accessed 21 June 2024.

Experience of stakeholders

Voting via a poll

Many stakeholders supported voting via poll and indicated that listed companies already undertook the practice prior to the legislative changes.¹⁷⁵ The use of polls as the preferred way of determining the membership's view was incorporated in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations 4th Edition* in 2019.¹⁷⁶ If a poll is not used, most large listed companies are effectively required to explain the reasons why. Stakeholders mentioned the benefits of voting via poll include better member representation and modernised governance practices that maintain confidence in voting outcomes. One submission from an individual member expressed a preference for a return to voting on a show of hands.¹⁷⁷

Although the legislative changes only applied to listed companies, Clubs Australia stated that during hybrid meetings, it is challenging to tally votes received both in-person and virtually.¹⁷⁸ The Panel notes that enhancements in technology utilised by smaller companies and not-for-profit entities may alleviate these challenges over time.

Independent reports on polls

Many stakeholders either supported the changes enabling independent reports to be requested on polls or stated that they had not experienced any issues with the changes.¹⁷⁹ Ownership Matters noted independent reports provide members with greater confidence of highly contested resolutions.¹⁸⁰

Some stakeholders noted the provision is rarely used, with HSF noting it is used in exceptional circumstances.¹⁸¹ HSF stated that in the few circumstances a report is done, they have observed uncertainty concerning the scope of the independent report and information to be contained within it. Computershare reported it had been appointed to observe and scrutinise the poll of an ASX50 company and provided the required statutory documentation.¹⁸² MUFG stated it acts as the returning officer and where there is a close or contentious item tabled as a resolution, their clients will often have their auditors present to provide a review.¹⁸³

Ownership Matters raised a concern about the independence of the scrutineer, stating that registry service providers should be excluded from being able to prepare independent reports.¹⁸⁴

175 ACSI submission; AICD submission ; ASA submission; Clayton Utz submission; Computershare submission; GIA submission; Lumi submission; MUFG submission; Ownership Matters submission.

176 Recommendation 6.4 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*, 4th edition, 2019, specifies that all substantive resolutions of ASX listed companies be decided by poll rather than a show of hands.

177 Confidential submission.

178 Clubs Australia submission p 4.

179 AICD submission; Computershare submission; GIA submission; HSF submission; LCA submission; MUFG submission; Ownership Matters.

180 Ownership Matters submission p 2.

181 Computershare submission p 5; HSF submission p 8.

182 Computershare submission p 5.

183 MUFG submission p 5.

184 Ownership Matters submission p 2.

Other issues relating to voting

Some stakeholders raised issues with the timing for when voting is open and closed¹⁸⁵ and how the results of a vote are disclosed.¹⁸⁶ Others proposed changes to the proxy voting framework to reduce complexity and increase transparency.¹⁸⁷

Although the amendments may affect the ability of companies to manage voting and proxy lodgement, these arrangements were not changed by the amendments in 2021 and 2022 and are outside the scope of this review.

Findings and Recommendations

The Panel heard from the majority of stakeholders that the legislative changes to voting via poll were supported and that listed companies already undertook the practice prior to these changes, in accordance with the ASX Corporate Governance Council recommendations.¹⁸⁸ The commentary on the recommendation notes that when ‘ascertain[ing] the true will of the security holders attending and voting at the meeting...[i]n most cases, this can only be achieved with certainty by conducting a poll.’¹⁸⁹ Stakeholders view voting via poll as a modern governance practice that improves member representation and maintains confidence in voting outcomes.¹⁹⁰

The Panel also heard from the majority of stakeholders that they either supported the legislative changes enabling independent reports to be requested on polls or raised they had not experienced any issues with the changes.¹⁹¹ Notably, stakeholders also indicated that independent reports on polls were rarely requested, but they help provide confidence in highly contested resolutions.

On the issue of independence of observers and scrutineers of votes, the Panel notes that existing legislative safeguards require companies to take reasonable steps to ensure that the independent person observes and prepares a report on the outcome of the poll as requested.¹⁹² In addition, registry service providers cannot act as scrutineer if the poll in question concerns a matter relating to that service provider.¹⁹³ The company must also retain a copy of the requested report.¹⁹⁴ As many stakeholders stated that they had not experienced any issues with the changes, the short amount of time the provisions have been in place, and the legislative safeguards, it may be too early to exclude share registries from being scrutineers.

185 Computershare submission; Stephen Mayne submission.

186 Lumi submission; Stephen Mayne submission.

187 Australian Custodial Services Association submission; Computershare submission; Stephen Mayne submission.

188 ACSI submission; AICD submission; ASA submission; Clayton Utz submission; Computershare submission; GIA submission; MUFG submission; Lumi submission; Ownership Matters submission. See also Recommendation 6.4 of the ASX Corporate Governance Council’s *Corporate Governance Principles and Recommendations*, 4th edition, 2019, referred above.

189 ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 4th edition, 2019, p 25.

190 Clayton Utz submission; Ownership Matters submission.

191 AICD submission; Computershare submission; GIA submission; HSF submission; LCA submission; MUFG submission; Ownership Matters submission.

192 For companies, see ss 253UB(3) and 253UC(4) of the Corporations Act; for registered schemes, see ss 253UD(3) and 253UE(4).

193 For companies, see ss 253UB(6) and 253UB(7) of the Corporations Act; for registered schemes, see ss 253UD(6) and 253UE(7).

194 Corporations Act, s 253UG.

Considering the objective to support the efficient and effective operation of Australian companies and capital markets, and recognising the importance of member participation, transparency and good corporate governance, the Panel considers it beneficial that voting adapts with technological evolutions.

The Panel finds that:

- Requiring the substantive resolutions of listed companies to be voted on via a poll continues to provide a modern and effective governance practice to ascertain the true will of the members on company propositions whilst maintaining confidence in voting outcomes.
- The operation of independent reports on polls has generally been functioning well.

Recommendation 5

The Panel recommends to the Government that the laws requiring listed companies and registered schemes to vote on substantive resolutions via poll be maintained.

Recommendation 6

The Panel recommends to the Government that the laws on independent reports on polls be maintained.

Directors' meetings

Effect of the amendments

Some changes were made to the use of technology for directors' meetings as part of the 2021 Act. This reflected the consolidation of references to the use of technology in the 2021 Act. This change was subsequently reversed by the 2022 Act to ensure there were no ongoing changes to the requirements. These provisions allowed directors' meetings to be called or held using any technology consented to by the directors unanimously.¹⁹⁵

Further changes were made in 2023 to remove the unanimity requirement for directors' meetings.¹⁹⁶

Experience of stakeholders

Stakeholders generally expressed support for virtual directors' meetings as they are needed from time to time.¹⁹⁷ AICD raised that virtual meetings broaden the pool of director candidates.¹⁹⁸ The Law Society of NSW raised that virtual directors' meetings allow meetings to be convened at short notice and for the board to respond quickly to issues.¹⁹⁹ Woodside Energy Group Ltd (Woodside) stated using technology is important given its directors reside in multiple locations across the world.²⁰⁰

Findings and Recommendations

World Bank data collected across 153 economies in 2020 showed that 80 per cent of economies allow virtual board meetings.²⁰¹

The Panel notes that no significant changes to the arrangements for board meetings were ultimately made by amendments under consideration.

No concerns with the operation of the provisions were raised and the Panel makes no recommendations.

195 Section 248D as inserted by item 6 of Schedule 2 to the 2022 Act.

196 Section 248D as repealed and replaced by item 23 of Schedule 1 of the [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Act 2023](#), Australian Parliament House website, accessed 10 August 2024. These changes are outside the scope of this review.

197 AICD submission; GIA submission; MUFG submission.

198 AICD submission p 10.

199 Law Society of NSW submission p 4.

200 Woodside submission p 7.

201 V Eknath, T Londero & S Simonyan, Are virtual meetings for companies' shareholders and board members the new normal?, 2021.

Part 2: Treatment of documents

Giving meeting-related documents

Effect of the amendments

Prior to the 2022 amendments, the Corporations Act required documents relating to a meeting to be produced in hard copy and mailed unless the member had agreed to the document being sent via email or fax and other specific requirements in the Corporations Act were met. Some documents could still only be sent in physical form.

The amendments allowed the company, registered scheme or disclosing entity to choose whether to satisfy the relevant obligations through provision of hard copy documents or by using electronic means.²⁰² A document can be given either in physical form, by electronic means, by providing the member with details sufficient to allow them to access the document electronically, or in any other permitted way.²⁰³ However, a document may only be given electronically if it is reasonable to expect at the time it is given that it would be readily accessible and useable for subsequent reference.²⁰⁴

The amendments also allow annual reports, and other documents prescribed in regulations, to be provided by making them readily available on a website.²⁰⁵

Members may also now elect to receive documents in their preferred manner, and certain entities²⁰⁶ must notify members of their right to make an election each financial year.²⁰⁷

Members may elect to receive documents in physical form or electronically, and may make the election in respect of:

- all documents (under a standing election)
- specified classes or types of documents (under a standing election), or
- a single specified document (as an ad hoc request).²⁰⁸

202 See s 110C of Division 2 of Part 1.2AA as inserted by item 2 of Schedule 2 to the 2022 Act. Since the amendments commenced, the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* was legislated, further extending the categories of documents under the Corporations Act that may be sent electronically or in physical form.

203 See Corporations Act, subs 110D(1) and (4).

204 See Corporations Act, sub 110D(2).

205 See Corporations Act, sub 110D(3).

206 Public companies, the responsible entity of registered schemes and disclosing entities.

207 See s 110K as inserted by item 2 of Schedule 2 to the 2022 Act. This section was later amended to include corporate collective investment vehicles and the operator of a notified foreign passport fund.

208 See Corporations Act, ss 110E and 110J.

The sender must take reasonable steps to comply with a member's election to receive (or not receive) documents in their preferred form,²⁰⁹ however, failure to provide a document in the form elected by the member does not invalidate the giving of the document by the sender if the document is otherwise sent in compliance with the law.²¹⁰

Experience of stakeholders

General views and experience

Stakeholders who provided submissions were broadly accepting and supportive of the 2021 and 2022 amendments relating to the electronic distribution of documents and meeting-related materials. ASIC stated that the amendments in this area appear to be operating effectively. Sentiment among peak bodies suggests that the amendments are a sensible step towards modernising the Corporations Act.²¹¹ Other stakeholders, such as Clayton Utz, noted that the amendments have been positive for the conduct of business through greater choice, increased efficiency, cost reduction and increased accessibility.²¹²

The amendments appear to have increased the efficiency of sending documents. ASIC noted that, prior to the amendments, companies factored in an additional 3 to 4 days for printing and posting of meeting-related documents to members. This time tends not to be required when dispatching the documents electronically.²¹³ However, most companies are likely to have a mix of electronic and physical communication requirements for their members so the overall time-saving is not clear. Despite this, the Australian Restructuring Insolvency & Turnaround Association (ARITA), ACCR, and Business Council of Australia (BCA) were all of the view that the electronic sending of documents was working expediently, efficiently, and effectively.

In addition to efficiency, stakeholders reported that electronic distribution of documents assisted to reduce the carbon footprint of companies,²¹⁴ reduced costs and promoted greater member engagement.²¹⁵ The AICD provided an example of one large ASX-listed company that saved approximately \$100,000 due to member elections to receive meeting-related materials electronically.²¹⁶ Clubs Australia provided an example of a club in NSW having saved approximately \$70,000 annually on postage for notices sent to members.²¹⁷

209 See Corporations Act, s 110F.

210 See Corporations Act, subs 110F(5).

211 CPA Australia submission p 1. See also BCA submission; GIA submission.

212 Clayton Utz submission p 5. See also BCA submission; GIA submission; LCA submission.

213 ASIC submission p 14.

214 BCA submission p 3.

215 Clayton Utz submission p 5.

216 AICD submission p 10.

217 Clubs Australia submission p 1.

Stakeholder experience regarding member elections was varied, with some bodies²¹⁸ reporting no issues or negative feedback and others, such as the ASA and ASIC, reporting that they had received a number of complaints. Complaints related to not receiving hard copies of meeting materials (including copies of the annual report, proxy forms, and notices of meeting) by post.²¹⁹ However, this may have been due to a misunderstanding between the company and the member.²²⁰ According to an ASA survey, 42 per cent of respondents who elected to receive meeting-related materials by post have reported having limited time to receive and review documents due to postal delivery timeframes which are further exacerbated in the event of non-delivery.²²¹ On the company side, stakeholders stated that ensuring compliance with each members' chosen method can be challenging, especially for companies with a larger member base, and that this could be mitigated with more robust IT and technology.²²²

Several stakeholders stated that electronic communication of materials should be the default method of communication, while maintaining the members' right to elect an alternative method of communication if desired.²²³ ASA's submission notes that the majority of respondents to their survey consider electronic communication is 'in some ways ... more direct and streamlined – so it is easier to respond.'²²⁴ The ASA was concerned that, in doing so, companies and share registries ensure that people electing to receive physical documents are not systematically disadvantaged or disenfranchised. HSF proposed going further and allowing notices of meeting and other meeting-related materials to be sent by way of publication on a website without the need to provide notices to members.²²⁵ The AICD and HSF raised concerns relating to distribution of members' statements about resolutions or meeting matters.²²⁶ These stakeholders want more certainty in the timeframe for the receipt and distribution of member statements. They note that timeframes are specified for companies to receive notice of a members' resolution for consideration at a general meeting.

The Queensland Law Society proposed that the requirement to send an annual notice to members informing them of their right to make an election should be removed for not-for-profit entities. This would reduce their costs and align treatment with the meeting notice requirements in the case of entities registered with the Australian Charities and Not-for-profits Commission.²²⁷ HSF proposed that the annual notice be abolished for all entities.

218 AICD submission; CAANZ submission; LCA submission.

219 ASA submission p 9.

220 Based on responses from ASA to follow-up questions from the Panel.

221 ASA submission p 9.

222 Clayton Utz submission p 12.

223 ASA submission p 10. See also CAANZ submission; BCA submission; GIA submission; LCA submission; MUFG submission; Wilson Asset Management submission.

224 ASA submission p 9.

225 HSF submission pp 1 and 7.

226 Corporations Act, s 249P.

227 Queensland Law Society submission p 2.

Findings and Recommendations

The Panel is of the view that the amendments relating to the giving of meeting-related documents are working well, and are providing an efficient and effective means to communicate materials with a company's members.

The Panel has heard from a large proportion of stakeholders that the legislative changes have improved efficiency, reduced timeframes to prepare materials, and have been received positively by members. Furthermore, companies have reported a range of benefits such as cost-saving,²²⁸ greater engagement²²⁹ and a reduction in carbon footprint.²³⁰ A smaller subset of stakeholders has gone further to propose that electronic communication should be the default method of communicating meeting-related materials. The Panel has not heard any evidence that the amendments have been misused or have facilitated fraud, though this may be due to the limited timeframe in which the amendments have operated.

The Panel notes that stakeholders have voiced concerns relating to the reluctance of registry platforms to adopt technology to enable full realisation of the benefits of the reforms. We note that this relates to interactions between private entities and it is possible that this is a transitional issue. It could benefit from further examination at a later point.

In consultation, the Panel heard a number of suggestions related to digital communication of non-meeting-related materials, and the relevant deadlines for receipt of materials. While these issues have interactions with meetings and documents, they fall outside the scope of this review as they have not arisen as a result of the amendments.

The Panel notes that members have reported concerns about the receipt of documents in the preferred manner and the operation of the elections system. The Panel is of the opinion that a lack of clarity as to whether an election is being made by a member from the perspective of both entities and members has contributed to situations where members believe an election has not been complied with. The Panel considers that companies should communicate the election requirements more clearly to members, including when they will take a method to be an election.

The Panel finds that:

- The electronic communication of meeting-related documents is supported by members and allows for more efficient distribution of documents, whilst maintaining flexibility for members to elect a means of communication that best suits their needs.
- Companies could benefit from increased guidance on the legislative boundaries and best practice for distribution of meeting-related documents.
- Companies should endeavour to utilise technology, particularly when it facilitates the adoption of internationally aligned standards for communication of meeting-related documents.

228 AICD submission p 3.

229 Clayton Utz submission p 5.

230 BCA submission p 3.

Recommendation 7

The Panel recommends to the Government that the laws concerning electronic distribution of meeting-related materials be maintained.

Recommendation 8

The Panel recommends that the Government considers alignment of meeting-related document distribution requirements for not-for-profit entities with other not-for-profit document distribution requirements under the Corporations Act.

Technology-neutral signing and execution of documents

Effect of the amendments

The amendments permitted greater use of electronic documents where their use was regulated or required by the Corporations Act. This allowed key business documents of companies, registered schemes and disclosing entities to be signed and executed while there were limits on people's movements due to the COVID-19 pandemic. It also provided a significant modernisation of the Corporations Act treatment of these matters.²³¹

The 2021 Act allowed electronic execution of company documents with or without a seal. If the document was executed with a company seal, fixing the seal could also be witnessed electronically.²³² Document execution requirements are vital for providing certainty for parties transacting with companies of their legal rights and obligations. They also set expectations that companies establish corporate governance mechanisms to ensure documents are only executed when the company intends to be bound by legal rights and obligations. These amendments sought to ensure that companies could execute documents in flexible and technology-neutral manners.

The 2022 Act allowed certain corporate documents, including documents relating to meetings of members, to be signed in technology-neutral and flexible manners.²³³ It also permanently allowed electronic execution of company documents, including meeting-related documents.²³⁴ This included

231 The *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* expanded the scope of changes to allow electronic signing of all documents under the Corporations Act. The 2023 expansion is outside the scope of this review.

232 See Corporations Act, s 127.

233 See Division 1 of Part 1.2AA as inserted by item 1 of Schedule 1 to the 2022 Act, and Corporations Act, s 110.

234 See Division 1 of Part 1.2AA as inserted by item 1 of Schedule 1 to the 2022 Act, and Corporations Act, s 127. Part 1.2AA of the Corporations Act was further amended by the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023*.

allowing sole directors of proprietary companies with no company secretary to execute a document if they signed the document or witnessed the fixing of the company's seal.²³⁵ The 2022 Act also enabled agents to execute documents, including deeds, on behalf of companies.²³⁶

Experience of stakeholders

The majority of stakeholders believe the amendments concerning the electronic execution of documents are operating effectively.²³⁷ Some described the reforms as long overdue modernisation that aids in the operation of a globalised and digital economy.²³⁸ They state that electronic execution is more efficient, with benefits to the environment. For example, DocuSign, Inc. (DocuSign) stated that a financial institution client believes that electronic execution and the reduction of associated paper will be a key step towards it achieving carbon neutrality.²³⁹ Another financial institution that recently adopted electronic execution expects to save over one million pieces of paper per year.²⁴⁰ DocuSign also stated that it has benefited those who live remotely, those with disabilities and those who are linguistically diverse.²⁴¹

The Panel was particularly interested in whether any experience or concerns with fraud had arisen following the amendments. The signing and execution of documents represent commitments by companies, therefore fraud can have serious consequences. Several stakeholders noted they have not witnessed an increased risk due to the amendments.²⁴² The Queensland Law Society and DocuSign noted that electronic execution can be a deterrent for fraud, as it can offer an audit trail of security and authentication via digital footprint that is admissible in court as evidence. Information that can be captured during electronic execution include IP addresses, geographic location, multi-factor authentication data and identification document verification.²⁴³

Similar to the experience in document distribution, Chartered Accountants Australia and New Zealand (CAANZ) noted that the reforms have removed significant time and cost barriers to the completion of documents. Association of Independent Insolvency Practitioners (AIIP) provided an example of improvements in administrative efficiency, resulting in cost savings of \$100,000.²⁴⁴

The Walrus Committee noted that, whilst the reforms have provided certainty concerning the legality of electronic execution, the provisions concerning agent execution should be expanded to include corporate agents or attorneys.²⁴⁵ They note that the agent provisions '[do] not contemplate a corporate entity (whether or not a Corporations Act company) acting as agent or attorney for a company; it is limited to "*an individual acting with the company's express or implied authority...*"'.²⁴⁶

235 See Corporations Act, para 127(1)(c).

236 See Corporations Act, s 126. Agents are individuals acting with a company's express or implied authority on behalf of the company.

237 ARITA submission; ASIC submission; ASX submission; BCA submission; GIA submission; LCA submission; Lumi submission; MUFG submission; Walrus Committee submission.

238 ABA submission; BCA submission; DocuSign submission; GIA submission.

239 DocuSign submission p 2.

240 DocuSign submission p 2.

241 DocuSign submission p 1.

242 ASX submission; DocuSign submission; Walrus Committee submission.

243 DocuSign submission; Queensland Law Society submission.

244 AIIP submission p 2.

245 Walrus Committee submission p 4.

246 Walrus Committee submission p 4. Emphasis in the original.

The Committee states that it is common for a corporation to sign documents as agent or attorney for another corporation, or for some documents to give corporations the power to do so.

Several stakeholders noted the reforms have provided certainty concerning the legality of the electronic execution of company documents. However, there remains some uncertainty due to differing requirements under state and territory laws concerning valid deed execution and their interaction with the Corporations Act provisions.²⁴⁷ The possible application of state and territory laws may also affect the national uniformity intended by the amendments and stakeholders recommended that a nationally consistent regime for the execution of deeds and other documents be pursued.²⁴⁸ The Walrus Committee proposed that:

- it should not be necessary for a deed to be sealed or be expressed to be sealed for it to be executed under the relevant section²⁴⁹
- any requirements for the execution of deeds under state or territory laws that affect deeds executed under the Corporations Act should be expressly overridden.²⁵⁰

The Panel notes that Commonwealth, state and territory representatives have formed a working group to consider options to harmonise deeds across various jurisdictions.²⁵¹

Findings and Recommendations

The Panel is of the view that electronic signing of documents is an important element of enabling modern communications in an increasingly digital economy.

The Panel has heard that the reforms have facilitated a more efficient and accessible means of conducting business. Stakeholders cite reduced costs and reduction of delays particularly as key improvements resulting from the amendments.

Additionally, there have been no concerns raised with regulators, and no observed evidence of an increased risk due to fraud or misuse of the amendments. It is possible that this may be due to the limited timeframe in which the amendments have operated, and may warrant further examination at a later date.

The Panel notes stakeholder concerns relating to a reluctance of certain companies to utilise the amendments, instead preferring to continue using wet-ink signatures. We note that this relates to interactions between private entities and it is possible that this is a transitional issue. It could benefit from further examination at a later point.

The Panel has heard suggestions that the law be amended to allow corporate entities to act as agents or attorneys for a company. Evidence presented to the Panel suggests that this is an inconsistent approach.

247 ABA submission, AICD submission, DocuSign submission, Walrus Committee submission.

248 BCA submission; DocuSign submission; Walrus Committee submission.

249 Walrus Committee submission p 2.

250 Walrus Committee submission p 2.

251 Attorney-General's Department, *Modernising Document Execution*, Attorney-General's website, accessed 10 August 2024.

The Panel finds that:

- Electronic signatures and document execution are broadly supported by stakeholders and are seen as a fundamental step towards a modernised and technology-facilitated economy.

The Panel supports the work of the Commonwealth and state and territory Working Group considering the harmonisation of statutory declarations and deeds across various jurisdictions.

Recommendation 9

The Panel recommends to the Government that the laws concerning electronic signing and execution of documents be maintained.

Recommendation 10

The Panel recommends to the Government that there be an examination of whether the power to act for a company in relation to company documents should be extended to corporate entities.

Recommendation 11

The Panel recommends to the Government that, due to the limited timeframe for operation of the amendments, their potential for misuse or facilitation of fraud should be examined in 5 years' time to ensure no significant issues have arisen.

Appendix A: List of Submissions

The review received 38 submissions, including two wholly confidential submissions. Stakeholders who made non-confidential submissions are listed below.

Association of Independent Insolvency Practitioners
Australasian Centre for Corporate Responsibility
Australasian Investor Relations Association
Australian Banking Association
Australian Council of Superannuation Investors
Australian Custodial Services Association
Australian Institute of Company Directors
Australian Restructuring Insolvency & Turnaround Association
Australian Securities and Investments Commission
Australian Shareholders' Association
Australian Securities Exchange
Broadridge
Business Council of Australia
CPA Australia
Chartered Accountants Australia and New Zealand
Clayton Utz
Clubs Australia
Company Matters Pty Limited
Computershare Investor Services
DocuSign, Inc.
Terry Dwyer
Governance Institute of Australia
Herbert Smith Freehills
Law Council of Australia Business Law Section
The Law Society of New South Wales
Rodd Levy
Lumi Global
Stephen Mayne
MUFG Corporate Markets
National Roads and Motorists' Association Limited
Ownership Matters
Queensland Law Society
Allen Robinson
Walrus Committee
Wilson Asset Management
Woodside Energy Group Ltd

Appendix B: International treatment and experiences

Hybrid and wholly virtual meetings

Since the COVID-19 pandemic, the number of jurisdictions allowing companies to hold hybrid and wholly virtual meetings has been increasing. Some jurisdictions already provided companies the opportunity to hold meetings via electronic means prior to COVID-19, such as the UK and New Zealand. By the end of 2022, wholly virtual meetings were permitted in 37 jurisdictions, and hybrid meetings permitted by law or regulations in 40 of the 49 jurisdictions surveyed in the *OECD Corporate Governance Factbook 2023*.²⁵²

This Appendix outlines the approach and experiences of hybrid and wholly virtual meetings in certain jurisdictions. Certain approaches and experiences of other jurisdictions may be due to other laws and underlying frameworks of the particular jurisdiction.

United Kingdom

Meeting format

Companies incorporated in the UK have been able to hold meetings allowing people to attend, speak and vote using electronic means since amendments to the *Companies Act 2006* (United Kingdom) in 2009. ASIC's submission to the Panel noted that, while funds may hold virtual meetings, the UK law for other entities remains unclear on whether wholly virtual meetings are permitted.²⁵³ The law does not specifically address the matter and the OECD did not include the UK in its list of jurisdictions allowing them. A company's articles of association could also restrict the holding of meetings via electronic means.

Hopewell (2022) noted that 'many companies have introduced or are introducing new provisions into their Articles [of incorporation] to specifically permit hybrid meetings and to set out some of the procedural matters relating to the holding of those meetings.'²⁵⁴ Uncertainty about the legality of wholly virtual meetings has caused companies to be particularly wary of member concerns about virtual meetings. Resolutions have at times been carefully worded to satisfy investors that wholly virtual provisions put forward can only be used in exceptional circumstances. LexisNexis Market Tracker (2022) reported that in the 2021 AGM season 'some companies [were] going as far as to clarify that their ability to hold hybrid meetings will not allow them to hold virtual meetings.'²⁵⁵

252 OECD, *OECD Corporate Governance Factbook 2023*, p 77.

253 ASIC Submission p 11.

254 C Hopewell, *UK: Hybrid and Virtual General Meetings*, 2022, Bird & Bird website, accessed 9 August 2024.

255 LexisNexis Market Tracker, *Virtual meetings in the UK corporate landscape post-coronavirus*, 2022, LexisNexis website, accessed 9 August 2024.

Despite this, the UK market appears to have strongly moved back to physical meetings. Computershare *2024 AGM Intelligence Report* for Australia stated that their UK client meeting formats comprised of 81 per cent physical, 17 per cent hybrid, and 2 per cent wholly virtual. Computershare explained that ‘issuers returned to in-person meetings, driven by cost [sic] of facilitating online engagement and low online shareholder engagement in previous years.’²⁵⁶

Computershare also observed ‘a decrease in the attendance of registered shareholders ... which indicates that an increasing number of shareholders are holding their shares in custody accounts and therefore are not receiving direct invitations to annual meetings.’²⁵⁷

Regardless of the format used, the UK Financial Reporting Council (UK FRC), which sets the UK’s corporate governance code, suggests in guidance that ‘[i]nformation disseminated prior to the general meeting must offer clear instructions on how to attend the meeting and participate, in order to enable effective shareholder engagement.’ The UK FRC goes on to state that ‘[c]lear and timely instructions for the process for attending and participating in the meeting (depending on the format of the meeting), including access to the meeting ..., asking questions, and voting ..., should be provided to shareholders’ and ‘[i]nformation ... should provide clarity on what form(s) ‘electronic facilities’ will take and what it may cover.’²⁵⁸

Rules on meeting conduct

The *Companies Act 2006* (United Kingdom) requires that members of listed companies be provided the ability to participate in and vote at general meetings. This includes answering of questions put at the meeting. The UK FRC’s second principle in its guidance suggests that ‘[w]hether meetings are physical, hybrid or virtual (should the legal position be clarified), shareholders should, as far as practicable, be able to engage in the business of the meeting.’ Furthermore ‘shareholders should have the same rights of participation in hybrid (and, if the legal position is clarified, virtual) meetings as in physical meetings.’²⁵⁹

Principle 5 also suggests that ‘shareholders should have the opportunity to raise questions pertinent to the meeting agenda.’ This includes online, real-time functionality for any virtual element oral or written questions.²⁶⁰

Member views and experience of meetings

Part of the explanation of UK companies’ return to physical meetings has been a lower than expected use of virtual-technology-enabled format by members. In 2022, the law firm Clifford Chance observed ‘[c]ontrary to what many expected, those listed companies which provided hybrid and webcast facilities reported low numbers using the electronic platform, suggesting that hybrid

256 Computershare, *2024 AGM Intelligence Report*, 2024, Computershare website, pp 32 and 34, accessed 9 August 2024.

257 Computershare, *2024 AGM Intelligence Report*, p 32.

258 UK Financial Reporting Council, *Good Practice Guidance for Company Meetings* [pdf 0.6MB], 2022, UK Financial Reporting Council website, p 6, accessed 2 August 2024.

259 UK Financial Reporting Council, *Good Practice Guidance for Company Meetings*, p 7.

260 UK Financial Reporting Council, *Good Practice Guidance for Company Meetings*, p 10.

meetings may not be the most effective route to encouraging and increasing shareholder participation at AGMs.²⁶¹

Concerns about company practices at member meetings in the UK are similar to those in Australia. LexisNexis Market Tracker (2022) reported that ‘various institutional investor groups in the UK have been supportive of hybrid meetings, it is often the case that they see virtual meetings as a step too far.’²⁶² Gambetta (2024) also reported on concerns about the handling of participation and questions at meetings, including ignoring or omitting, editing or combining them with others.²⁶³

United States of America

Meeting format

Companies incorporated in the US are formed subject to state laws. Accordingly, the ability to hold meetings by electronic means is largely governed by state law and the issuer’s governing documents. The ability to accommodate members that were not physically present at the meeting has existed for some time. For example, the state of Delaware, which is favoured for incorporation in the US, amended its General Corporation Law to allow this in 2000. According to the OECD, ‘[a]s of early 2023, the majority of the 50 US states permitted shareholder meetings to be held remotely.’²⁶⁴ According to Broadridge, 49 of the 50 US states permit wholly virtual member meetings, while one state permits only physical meetings.²⁶⁵

The New York Stock Exchange and Nasdaq Stock Market require that companies listed on their exchanges must hold AGMs but do not prescribe rules on the format of such meetings. However, Nasdaq’s Market Rules require AGMs to permit members to address company affairs with management.²⁶⁶

ASIC noted that US ‘issuer[s must] disclose clear details about the logistical details of the virtual or hybrid meeting, including how to access, participate and vote.’²⁶⁷

Computershare’s *2023 US Annual Meetings Report* for Australia stated that the meetings of their US clients were 70 per cent physical, 28 per cent hybrid, and 2 per cent wholly virtual. This compared to 16 per cent physical, 82 per cent hybrid and 2 per cent wholly virtual for the whole of the S&P 100.²⁶⁸

261 Clifford Chance, *Shareholder Engagement: AGMs – What Are The Latest Trends?* [pdf 1.2MB], 2022, Clifford Chance website, p 2, accessed 9 August 2024.

262 LexisNexis, *Virtual meetings in the UK corporate landscape post-coronavirus*.

263 G Gambetta, *Are AGMs still functioning in 2024?*, 2024, Responsible Investor website, accessed 9 August 2024.

264 Footnote 21 to Table 3.5. Virtual and hybrid shareholder meetings in *OECD Corporate Governance Factbook 2023*, p 104.

265 Broadridge, *States that Allow and Prohibit Virtual Shareholder Meetings*, Broadridge website, accessed 9 August 2024. New Mexico is the sole state requiring physical meetings only.

266 See 5620 and IM-5620 in Nasdaq, *5600. Corporate Governance Requirements*, Nasdaq website, accessed 9 August 2024.

267 ASIC submission pp 11-12.

268 Computershare, *2023 US Annual Meetings Report*, Computershare (US) website, p 5, accessed 9 August 2024.

Rules on meeting conduct

The rules for conducting members' meetings in the US are largely the same regardless of the format of the meeting. Companies must allow members to vote on proposals and 'question and answer ("Q&A") session[s], while not legally required, is standard practice.'²⁶⁹

During the COVID-19 pandemic, the US Securities Exchange Commission (SEC) issued staff guidance for securities issuers on wholly virtual and hybrid meetings due to increased queries.²⁷⁰ The guidance noted that the '[r]obust disclosures that facilitate informed shareholder voting are just as important for a "virtual" meeting or "hybrid" meeting ... as they are for an in-person meeting.'²⁷¹ Furthermore:

[t]o the extent an issuer plans to conduct a "virtual" or "hybrid" meeting, the staff expects the issuer to notify its shareholders, intermediaries in the proxy process and other market participants of such plans in a timely manner and disclose clear directions on the logistical details of the "virtual" or "hybrid" meeting.²⁷²

Company views and experience of meetings

Chia and Lee (2021) noted that 'companies have expressed few objections to the concept of the [virtual shareholder meetings], even though the overwhelming majority of them preferred to hold their annual meetings in person.'²⁷³ They state that companies using wholly virtual meetings in 2020 reported positive experiences and lower costs compared to physical and hybrid meetings.

However, Chia and Lee also noted that companies reported downsides. These included a steep learning curve, the demands of coordinating the different communication streams, capacity of directors and management to use the technology effectively, increased preparation time, and ensuring that participants with speaking roles on member proposals could contribute.²⁷⁴

Member views and experience of meetings

Chia and Lee note that, similarly to Australia, some institutional shareholders have had longstanding concerns that wholly virtual members' meetings limit opportunities for the exercise of rights and engagement with directors and management. These concerns included the tighter control exercised by companies, a lack of transparency about the handling of questions, an inability to ask follow-up questions and loss of the opportunity for 'eye contact, both formally and informally, with board members, company executives, and other shareholders.' Chia and Lee also noted that some

269 DK Chia & AS Lee, *Report on Practices for Virtual Shareholder Meetings*, 2021, Harvard Law School Forum on Corporate Governance website, accessed 10 August 2024.

270 States also amended laws to manage the effects of the pandemic. A summary of the changes for Delaware is available in LR Stark, SM Jones & SM Kirkpatrick, *Delaware and the SEC Facilitate Virtual Stockholder Meetings as the COVID-19 Outbreak Spreads*, 2020, American Bar Association website, accessed 10 August 2024.

271 US Securities and Exchange Commission, *Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns*, 2020, US Securities and Exchange Commission website, accessed 10 August 2024.

272 US Securities and Exchange Commission, *Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns*.

273 DK Chia & AS Lee, *Report on Practices for Virtual Shareholder Meetings*.

274 DK Chia & AS Lee, *Report on Practices for Virtual Shareholder Meetings*.

members recognised positives from meetings held by electronic means, appreciating the ability to attend, present proposals and ask questions at more meetings, and to ask more questions.²⁷⁵

Canada

Meeting format

Companies incorporated in Canada are formed subject to provincial laws and the federal *Canada Business Corporations Act*, as well as their founding documents. ASIC's submission stated that wholly virtual meetings are generally permitted and the constitution generally does not need to be amended to provide for this, although both depend on the particular province. Some provinces also have specific requirements for how a 'fully electronic' meeting may be conducted.²⁷⁶

Rules on meeting conduct

The Canadian Securities Administrators issued guidance to companies for meetings held using electronic means in February 2023.²⁷⁷ The guidance requires:

reporting issuers provide clear and comprehensive disclosure ... with respect to the logistics for accessing, participating and voting at a virtual meeting. ... The ability to attend and participate in a shareholder meeting should not require anything more than a basic level of technological proficiency. The CSA is encouraging reporting issuers to provide for an ease, level and quality of shareholder participation at a virtual meeting that is comparable to that which a shareholder could reasonably expect if they were attending an in-person meeting.²⁷⁸

Member views and experience of meetings

In their guidance, the Canadian Securities Administrators noted that some members continue to hold concerns relating to their experiences with wholly virtual meetings. They stated that members 'have expressed that virtual-only meetings present challenges for shareholders wishing to exercise their rights and express themselves to management, as well as difficulties accessing and participating in the virtual meetings.'²⁷⁹ Prusinkiewicz (2024) identified a number of positions by institutional investors, their advisers, investor rights groups, and the Globe and Mail newspaper, opposed to wholly virtual meetings. Similar to Australia, the concerns from these groups include that they may limit members' voices and ability to exercise their rights and companies' control of the meetings.²⁸⁰

²⁷⁵ DK Chia & AS Lee, *Report on Practices for Virtual Shareholder Meetings*.

²⁷⁶ ASIC submission p 11.

²⁷⁷ Canadian Securities Administrators, *Canadian securities regulators provide updated guidance on virtual shareholder meetings*, 2024, Canadian Securities Administrators website, accessed 10 August 2024.

²⁷⁸ Canadian Securities Administrators, *Canadian securities regulators provide updated guidance on virtual shareholder meetings*.

²⁷⁹ Canadian Securities Administrators, *Canadian securities regulators provide updated guidance on virtual shareholder meetings*.

²⁸⁰ K Prusinkiewicz, *Virtual-only shareholder meetings: virtually over?*, 2024, Norton Rose Fulbright (Global) website, accessed 10 August 2024.

New Zealand

Meeting format

New Zealand has permitted wholly virtual and hybrid meetings since 2012 following amendments to the *Companies Act 1993* (New Zealand). Members may participate in a shareholder meeting by means of audio, audio and visual, or electronic communication. These means are subject to the approval of the board which may also impose conditions on the use of them. Virtual members participating in a hybrid or wholly virtual meeting are counted as part of the quorum for the meeting. ASIC noted that a change to a companies' constitution is not required to hold wholly virtual or hybrid meetings.²⁸¹ The OECD also noted that boards may impose conditions on participation by electronic means, for example conditions relating to the identity of the member.²⁸²

As far back as 2017 a majority of New Zealand companies were being reported as having shifted to hybrid members' meetings.²⁸³ Computershare's *2024 ASM Intelligence Report* for New Zealand stated that their clients' meeting formats comprised of 23 per cent physical, 61 per cent hybrid and 16 per cent wholly virtual. The majority of attendees at hybrid meetings were in-person.²⁸⁴

Rules on meeting conduct

The laws governing the proceedings at companies' meetings in New Zealand are spelt out in Schedule 1 of the *Companies Act 1993* (New Zealand). Voting may be conducted by voice, show of hands or poll, if one is demanded, although voting at wholly virtual or hybrid meetings is determined by the chairperson of the meeting unless a poll is demanded.

Company views and experience

Rebbeck (2017) noted the drivers for New Zealand companies to move to hybrid and wholly virtual members' meetings as:

- ever decreasing attendance at physical meetings;
- rising costs of holding in-person meetings;
- improved use of management and director's time; and
- declining relevance to the company – as major shareholders receive briefings and vote in advance of the meeting.²⁸⁵

281 ASIC submission p 11.

282 OECD, *OECD Corporate Governance Factbook 2023*, p 104.

283 B Rebbeck, *Retail shareholder meetings: lessons from across the ditch*, 2017, First Advisers website, accessed 10 August 2024.

284 Computershare, *2024 ASM Intelligence Report*, 2024, Computershare (NZ) website, p 23, accessed 10 August 2024.

285 B Rebbeck, *Retail shareholder meetings: lessons from across the ditch*.

Member views and experience

In its *2024 ASM Intelligence Report*, Computershare states that hybrid meetings are ‘actively encouraged by the market, including the NZ Shareholders [sic] Association.’²⁸⁶ The New Zealand Shareholders’ Association (NZSA) opposes wholly virtual meetings ‘on the basis that they do not allow for full interaction with Boards and senior management... A survey of NZSA members indicates that their main issue with virtual meetings is asking questions.’²⁸⁷

Singapore

Meeting format

The *Companies Act 1967* (Singapore) was updated in 2023 to facilitate the use of hybrid and virtual members’ meetings. This followed the expiration of temporary legislation during the COVID-19 pandemic. ASIC noted that no amendments to a company’s constitution are required to hold hybrid or wholly virtual meetings.²⁸⁸

BoardRoom reported that 42 per cent of its clients held virtual meetings in 2023.²⁸⁹

Rules on meeting conduct

Members of Singapore companies have rights to attend meetings, speak, make representations and inspect documents. Members may vote by electronic means or any other means permitted by the constitution of the company. Private companies may be exempted or be able to dispense with holding an AGM.

Companies listed on the Singapore Exchange must follow rules regarding general meetings. These rules include rights to ‘attend, ask questions, communicate their views, and to appoint proxies or to vote at general meetings.’²⁹⁰ Companies holding hybrid meetings must provide processes to verify and authenticate member identity, allow real-time voting and communication.

Company views and experiences

BoardRoom states that companies continued with virtual meetings due to ‘[l]ower cost, time savings and flexibility for shareholders and board members, in situations where most board members are based overseas [and] [p]ersisting COVID-19 concerns...’ BoardRoom also stated that companies moved back to physical meetings due to ‘[o]rganisations['] desire to connect with shareholders and members in person [and] [s]hareholder feedback to hold face-to-face meetings.’²⁹¹

286 Computershare, *2024 ASM Intelligence Report*, p 23.

287 New Zealand Shareholders Association, *NZSA Policy No 19 – Annual and Special Shareholder Meetings Format* [pdf 0.2MB], 2021, New Zealand Shareholders Association, p 3, accessed 10 August 2024.

288 ASIC submission p 11.

289 BoardRoom, *2023 Singapore AGM Insights Report*, 2023, BoardRoom (Singapore) website, p 6, accessed 10 August 2024.

290 SGX Group, *Practice Note 7.5 General Meetings*, 2023, SGX website, accessed 10 August 2024.

291 BoardRoom, *2023 Singapore AGM Insights Report*, p 6.

South Africa

Meeting format

The *Companies Act, 2008* (South Africa) permits companies to hold hybrid and wholly virtual meetings. This may be overridden by the company's memorandum of incorporation.²⁹² The technology used for electronic communication must enable all persons participating in the meeting to communicate with each other and participate reasonably effectively in the meeting. Further, all meetings must be reasonably accessible within South Africa for electronic participation by members, regardless of where the meeting is held.

Rules on meeting conduct

Kruger and Prinsloo (2023) state that '[t]he Companies Act and the [Johannesburg Stock Exchange] Listings Requirements require that certain shareholder resolutions must be adopted at a meeting of the shareholders, and cannot be adopted via written resolution.'²⁹³ Member voting using virtual technology must allow for real-time votes.

The South African Companies and Intellectual Property Commission has also clarified that members attending electronically cannot be restricted to text-based communication.²⁹⁴

Electronic distribution of documents

United Kingdom

The UK permits meeting-related documents to be sent to members electronically where the member has consented. The UK also permits communication via a website where provided for in the article of association, authorised via a resolution or members have provided consent.²⁹⁵

United States of America

The US provides for a 'notice-only' delivery option where the issuer must post its proxy materials on an internet website and send a notice to members to inform them at least 40 calendar days before the members' meeting. An issuer must respond to members' requests for copies, including if a member permanently requests to receive paper or email copies.²⁹⁶

292 D Kruger & J Prinsloo, *Is conducting a wholly virtual shareholder meeting or AGM compliant with the Companies Act?*, 2023, CDH Incorporated website, accessed 10 August 2024.

293 D Kruger & J Prinsloo, *Is conducting a wholly virtual shareholder meeting or AGM compliant with the Companies Act?*

294 Institute of Directors South Africa, *CIPC clarification on virtual AGMs should encourage active shareholder participation*, 2023, Institute of Directors South Africa website, accessed 26 July 2024.

295 *Companies Act 2006* (United Kingdom); Brodies LLP, *Electronic communication with shareholders - a brief guide*, 2020, Brodies LLP website, accessed 10 August 2024; Simply-Docs, *Are Meeting Documents Allowed to be sent Electronically?*, Simple-Docs website, accessed 10 August 2024.

296 U.S. Securities and Exchange Commission, *Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns*.

Canada

Canada permits the distribution of meeting materials to members in electronic form under a 'Notice and Access' regime.²⁹⁷ The regime permits materials to be made available to members through the internet, subject to conditions being met and a notice of the delivery provided.²⁹⁸

Electronic document signing and execution

United Kingdom

Electronic signatures are deemed equivalent to wet-ink signatures and widely used in the UK for commercial agreements. Some types of wet-ink documents have been identified as not typically appropriate for electronic signatures, such as real property documents for registration, wills and powers of attorney. DocuSign notes that it is not recommended to use electronic records and signatures for deeds in the UK.²⁹⁹

United States of America

Electronic signatures are broadly acceptable across the US. The net effect of both federal and state legislation is that every jurisdiction across the United States has substantially the same rules for the use of electronic signatures.³⁰⁰

Canada

Canada permits the use of electronic and digital signatures through federal and provincial level legislation. The signing of documents for commercial purposes is largely governed by uniform electronic commerce laws at the provincial level. These laws allow electronic signatures to be used and electronic contracts to be made and operate.³⁰¹

297 Thomson Reuters, *Shareholders' Meetings: Notice and Access* [webpage], accessed 10 August 2024.

298 B Kraeker & KM Ritchie, *Guide to Doing Business in Canada: Securities law & corporate governance*, 2023, Gowling WLG website, accessed 10 August 2024.

299 Docusign, *eSignature Legality in The United Kingdom*, Docusign website, accessed 10 August 2024.

300 Adobe, *Electronic Signature Laws & Regulations – United States*, Adobe website, accessed 18 July 2024.

301 Adobe, *Electronic Signature Laws & Regulations – Canada*, 2024, Adobe website, accessed 10 August 2024.

Appendix C: Summary of the 2021 and 2022 amendments

Table 1. Legislative arrangements for meetings

| Prior to the amendments | After Schedule 1 to the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i> | After <i>Corporations Amendment (Meetings and Documents) Act 2022</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Meetings must be held at a physical location. While technology can be used to connect people at one or more other locations, wholly virtual meetings were not permitted.</p> <p>Determinations No. 1 and 3 temporarily allowed meetings to be held virtually.</p> | <p>Companies and registered schemes can hold wholly virtual meetings of members, regardless of requirements in the constitution, until 31 March 2022.</p> <p>ASIC may allow (for 12 months) companies and registered schemes to hold a wholly virtual meeting if ASIC considers it may be unreasonable for them to hold a physical or hybrid meeting.</p> | <p>Companies and registered schemes can hold meetings of members at one or more physical locations (a physical meeting), at one or more physical locations and using technology (a hybrid meeting), or if permitted by a company's constitution, as a wholly virtual meeting.</p> <p>No changes to ASIC's ability to allow companies to hold a wholly virtual meeting.</p> |
| <p>Votes on company resolutions are decided by a show of hands unless a poll is demanded. A company's constitution can provide otherwise. For registered schemes, special or extraordinary resolutions are decided via poll, with other resolutions decided by a show of hands, unless a poll was demanded.</p> <p>Determinations No. 1 and 3 temporarily required a vote to be taken on a poll.</p> | <p>Votes on all resolutions at a physical meeting of a company or registered scheme's members are decided on by show of hands, unless a company's constitution provides otherwise. If the meeting is held using technology, the default method for voting is generally a poll.</p> <p>This sunset on 31 March 2022.</p> | <p>Votes on resolutions which are set out in the notice of a meeting of members of a listed company or listed registered scheme must be decided on by poll. A listed company's constitution cannot provide otherwise.</p> <p>Other resolutions may be decided on a show of hands if a poll has not been demanded, unless a company's constitution provides otherwise.</p> |
| <p>No equivalent.</p> | <p>No equivalent.</p> | <p>A member or group of members of a company or registered scheme with at least 5 per cent of the votes can request to have an independent person appointed to observe and/or prepare a report on a poll conducted at a members' meeting.</p> |

Statutory Review of the Meetings and Documents Amendments

| Prior to the amendments | After Schedule 1 to the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i> | After <i>Corporations Amendment (Meetings and Documents) Act 2022</i> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| In general, minutes must be kept in hard copy. | The minutes for meetings of shareholders and members of registered schemes may be taken electronically and the minute book may be provided to shareholders and members and kept electronically. This sunset on 31 March 2022. | It is permanent that the minutes for meetings of shareholders and members of registered schemes may be taken electronically and the minute book may be provided to shareholders and members and kept electronically. |
| Directors’ meeting may be called or held using any technology consented to by the directors unanimously. Determinations No. 1 and 3 temporarily allowed virtual meetings. | Directors’ meeting may be held using electronic means. This sunset on 31 March 2022. | Directors’ meeting may be called or held using any technology consented to by the directors unanimously. ³⁰² |

302 The *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* removed the unanimity requirement.

Table 2. Legislative arrangements for the treatment of documents

| Prior to the amendments | After Schedule 1 to the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i> | After <i>Corporations Amendment (Meetings and Documents) Act 2022</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Documents relating to a meeting must be posted unless the member has agreed to the document being sent via email or fax and the specific requirements in the Corporations Act are met. Some documents may only be provided via post.</p> <p>Determinations No. 1 and 3 temporarily allowed a flexible approach.</p> | <p>Documents relating to a meeting may be given electronically until 31 March 2022. Members of companies and registered schemes can elect to receive hard copy documents.</p> <p>ASIC may determine that documents may be given in electronic form if ASIC considers it may be unreasonable for the document to be given in physical form.</p> | <p>It is permanent that documents relating to a meeting may be given electronically. Members of companies and registered schemes can elect to receive meeting-related documents electronically or in hard copy.</p> <p>The power was extended to allow ASIC to make a determination that documents may be given in physical form if ASIC considers it may be unreasonable for the document to be given in electronic form.</p> |
| <p>Documents relating to a meeting must generally be signed in hard copy.</p> <p>Determinations No. 1 and 3 temporarily allowed a flexible approach.</p> | <p>Documents relating to a meeting may be signed electronically by using a method to identify the signatory and indicate the signatory's intention until 31 March 2022.</p> | <p>Certain corporate documents, including documents which relate to meetings of members, can be signed in a flexible manner.³⁰³</p> |
| <p>To execute a company document, all persons must physically sign the same hard copy.</p> <p>Determinations No. 1 and 3 temporarily allowed a flexible approach for documents executed without a company seal.</p> | <p>Company documents executed both with and without a seal may be executed using electronic means. If the document is executed by fixing a company seal, electronic means may be used to witness the fixing of the seal.</p> <p>This sunset on 31 March 2022.</p> | <p>Companies can execute documents in a flexible manner.</p> |
| <p>Agents can make, vary, ratify or discharge contracts on behalf of companies.</p> | <p>No change.</p> | <p>Agents can make, vary, ratify or discharge contracts and execute documents (including deeds) on behalf of companies.</p> |
| <p>Proprietary companies with a sole director and no company secretary cannot use the statutory document execution mechanisms.</p> | <p>No change.</p> | <p>Proprietary companies with a sole director and no company secretary can use the statutory document execution mechanisms.</p> |

303 The *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* expanded the scope of technology-neutral reforms to permanently allow all documents under the Corporations Act to be signed or executed electronically.