16 June 2016

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By email: medialiaison@treasury.gov.au

Dear Mr McAuliffe

Technology neutrality in distributing company meeting notices and materials

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility to develop and implement governance frameworks in public listed, unlisted and private companies, as well as in the not-for-profit (NFP) and public sectors. They have responsibility for working with the board to prepare the notice of meeting for general meetings (including annual general meetings — AGMs) and other materials that need to be sent to shareholders and for ensuring that distribution of these materials complies with the Corporations Act obligations.

Support for technology neutrality in the distribution of meeting materials

Governance Institute applauds the government for introducing proposals for the technology-neutral distribution of meeting materials.

It is a generally accepted cornerstone of sound corporate governance that shareholder participation is a key component of a successful annual general meeting (AGM) of shareholders. Yet shareholder attendance at AGMs is decreasing year by year. We have been tracking, in biennial surveys, the declining attendance of shareholders at the AGMs of the ASX200 over more than a decade. Despite this, the holding of an AGM in the current regulatory climate has significant cost implications for companies — costs have been increasing, and range from $250,000—$1,000,000 for ASX200 companies.[1]

Importantly, our large public listed companies frequently have hundreds of thousands of shareholders on the register, which means that shareholder attendance at AGMs can be seen

[1] All data from *Benchmarking Listed Company Secretarial Practice in Australia 2014* and *Benchmarking Governance in Practice in Australia 2012, 2010, 2008, 2006 and 2004*, published by Governance Institute of Australia, which have surveyed ASX200 companies every two years between 2003—2014. Size of companies surveyed by market capitalisation: Large companies: > $5bn; medium-sized companies between $500m and $5bn; and small companies <$500m.

to be drastically reduced when the percentage of shareholders physically attending is reported. Research by Computershare[2] of the companies which use it as the registry provider accords with our research — theirs shows that only 0.158 per cent of security holders attended AGMs in 2015 — – down 25 per cent over ten years.

Meanwhile, Australia Post has announced that it has ceased daily deliveries for standard mail and has moved to two or three per week delivery, and is charging a premium rate for daily deliveries. In January 2016, the Basic Postage Rate increased to $1 – up 42.9 per cent. This has significant implications for the delivery of AGM materials in relation to shareholders who have not provided an electronic address. In order to meet statutory deadlines for the delivery of meeting materials and avoid potential legal challenge in cases of insufficient notice, companies may be required to pay a premium. This means that it could cost companies (and their shareholders) even more than it does at present to hold the AGM, despite the lack of shareholder engagement with this important forum.

Shareholders already receive annual reports electronically — there was more than 90 per cent take-up by shareholders when this reform was introduced in 2007. In the nine years since the introduction of that reform, Australians have become even more accustomed to online engagement on multiple fronts, and reliance on hard copy materials has declined drastically. Given that the majority of shareholders no longer receive the annual report in hard copy, printing and mailing costs for companies (and their shareholders) can be reduced for the delivery of meeting materials if technology-neutral delivery becomes the default setting in legislation.

The Corporations Act was developed prior to the shift to a digital world. If Australia's corporate markets are to be fit for purpose in the 21st century, the legislation governing corporations and the management of corporations needs to embrace technology. As the proposals paper notes: 'The current requirements for distributing company meeting notices are technology-specific and have the effect of restricting digital services. They do not reflect the changes in the way Australians engage with digital communications technologies and content'.

Moreover, it is important that Australia's corporate regulatory regime remains competitive internationally, up-to-date and streamlined, to minimise compliance costs and facilitate shareholder engagement. We are of the view that companies and their shareholders will embrace the proposal to move to technology-neutral delivery of meeting materials as sensible, common sense and long overdue.

However, importantly, given the speed of technological change, it is important that any amendments to the Corporations Act be technology-neutral. That is, they need to provide for the use of technology without specifying any particular technology. This allows for innovation in shareholder communication and engagement (and corporate reporting), as technology evolves.

The government is to be commended for moving to a technology-neutral position in relation to the distribution of meeting materials. Governance Institute hopes that this is a first step in providing for technology-neutral corporations law generally.

Governance Institute also supports the government's intention to act on the Financial System Inquiry's recommendations to remove unnecessary prescription to promote efficiency and productivity and make Australian corporate regulation more internationally competitive.

Notwithstanding our very strong support for the introduction of technology-neutral delivery of meeting materials, Governance Institute is of the view that the proposals are overly complicated

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[2] Computershare, *Intelligence Report — Insights from company meetings held in 2015 Australia* and *Intelligence Report — Insights from company meetings held in 2014 Australia*. The 2013 report also noted that 'A continuous downward trend in attendance has been noted over the same period [the last six years], with attendance dropping by approximately 10% per year'.

and could be streamlined and simplified, to the benefit of shareholders, companies and, ultimately, the facilitation of enhanced shareholder engagement in AGMs.

Streamlining the proposals to facilitate shareholder communication

Effect of assumptions in proposals paper

The proposals paper notes that any reform to the current law is predicated on ensuring that a delivery method utilises a universal or near-universal channel of communication, which Governance Institute supports. The paper notes that mail functions as a universal channel of communication and that text messaging on mobile phones constitutes a near-universal channel of communication. However, the proposals paper also states that email and websites do not constitute near-universal channels of communication, although they may do so in the future.

Governance Institute contends that email and websites currently constitute near-universal channels of communication, and that the proposals paper itself supports this contention.

The proposals paper states that:

- Mobile phones are entrenched in the lives of almost all Australians with 94 per cent of adults using these portable devices to either send text messages or make calls as at May 2015.
- An overwhelming majority of Australians are internet users, with 92 per cent going online in the six months to May 2015.
- Almost 16 million Australians or 86 per cent of the population have a home internet connection as at June 2015.
- Australians continue to diversify their use of internet access devices, with mobile phones now the most popular devices used by adult Australians to access the internet (79 per cent of online Australians), followed by laptop computers (74 per cent) as at May 2015.

The paper then states that, as only 86 per cent of the population has an internet connection at home, email and websites do not constitute a near-universal channel of communication.

However, this statement does not recognise that:

- many Australians now access email and the internet via their smartphones and this is consistent with the statements in the proposals paper. Telstra released data in October 2015 showing that 81 per cent of Australian mobile phone owners now use a smartphone compared to only 76 per cent in 2014 and it's predicted this trend will continue, with 86 per cent of Australians using smartphones this year.[3] It is a false assumption that Australians only access the internet at home (and therefore email), as stated in the paper. The proposals paper itself notes that 92 per cent of Australians went online as at May 2015 — clearly not all were using a home internet connection if only 86 per cent have an internet connection at home
- many Australians also access email from their workplace or from libraries, and so access to the internet extends well beyond the home — the proposals paper is silent on access via these sources
- the statistics in the proposals paper that 79 per cent of Australians went online using their mobile devices and 74 per cent use laptops to access the internet show that Australians use more than one device to access email and the internet and reliance should not be placed on home access as the sole means of assessing whether email and the internet constitute near-universal channels of communication.

With the proposals paper itself confirming that an overwhelming majority of Australians go online via multiple devices — which means they access email and the internet from multiple locations — it is deeply puzzling as to why the paper then specifically excludes email and website access as near-universal channels of communication.

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[3] http://exchange.telstra.com.au/2015/10/01/why-aussies-love-smartphones/

Shareholders are not required to provide their mobile phone numbers to the companies in which they invest. Companies in general hold the mobile phone numbers of less than one per cent of their shareholder base. Therefore, companies will not be able to use text messages to the mobile phones of their shareholders to communicate with them. While the paper suggests that this could be the channel of communication that companies could use, it bears no relationship to the reality of how companies and their shareholders operate. It would be extremely difficult for companies to obtain mobile phone numbers from their shareholders. Brokers do not supply them to the share registry, and obtaining them would mean repeated mailings from the company and a likely success rate of almost zero, given it would require shareholders to go online to provide their phone number without any benefit attached to this activity from the shareholder's perspective. Shareholders would prefer email — the research from Computershare referenced in the proposals paper supports this. Text messaging may become a channel of communication with shareholders in the future, but certainly does not operate as one at present.

While we accept that the proposals paper seeks to be neutral as to the technological means by which communications must occur when companies distribute meeting notices and materials to shareholders, the intent is rendered ineffective by the paper's statement that email and websites do not constitute near-universals channel of communication. The proposals paper has already excluded the technological means by which companies and their shareholders would most prefer to communicate at present (using the technological means currently available).

While email may only account for 18.5 per cent of AGM communications at present (as set out in the proposals papers), other Computershare research referenced in the paper notes that 80 per cent of shareholders surveyed said they would prefer to receive AGM communications electronically. The current low take-up rate of email addresses is due to the legacy system of many shareholders coming onto the registry in a hard copy environment, not because shareholders do not wish to provide their email address. At present, there is no compulsion for shareholders to provide an email address, only a compulsion to provide a mailing address.

The reform of the law will involve communication to shareholders, which provides the opportunity to seek email addresses from shareholders. This will automatically lift the percentage held by companies from the lower rate referenced in the proposals paper, as the change of law introduces a compulsion for shareholders to provide an email address which is currently lacking.

As support for this contention, we note that many public listed companies communicated to their shareholders that bank account details were required for the payment of dividends, and that they would no longer be issuing cheques (which had been the standard form of payment method). These companies note that 95 per cent of shareholders complied readily, showing market acceptance of online interaction.

We also note that the exclusion of website communication as a near-universal channel of communication runs counter to other policy settings. For example, s 674 of the Corporations Act imposes an obligation on public listed entities to provide market disclosures in accordance with the listing rules of the market operator. Chapter 3 of the ASX Listing Rules outlines the continuous disclosure regime imposed by the ASX, with Listing Rule 3.1 setting out the general rule relating to notice of material information. Continuous disclosure is necessary to ensure investors receive timely disclosure of information that is material to their investment decision-making and critical for maintaining confidence that securities markets are fair and are seen as an attractive place for people to invest. To that end, it is a key principle underpinning the corporate governance framework for listed entities in Australia.

Australian companies make numerous market disclosures every year. Indeed, on any single day a review of the ASX announcements platform[4] will reveal the release of hundreds of announcements. If online announcements are considered appropriate for the disclosure to shareholders of the most vital elements of business, on the basis that the online announcements platform constitutes a near-universal channel of communication, Governance Institute queries why online disclosure of notices of meeting and meeting materials would not also constitute a near-universal channel of communication.

The market itself confirms that online disclosure and interaction are considered a near-universal channel of communication. For example, we note that the IPO of Medibank in 2014 offered subscription on the internet and this was utilised heavily. Many retail shareholders participated in this IPO and none had any difficulty accessing the internet to do so.

Recommendations concerning streamlining proposals

As a result of the exclusion of email and internet access as near-universal channels of communication (at present), the proposals set out in the paper are overly complicated and do not facilitate shareholder communication, despite the best of intentions. The complexity inherent in the proposals arise from the effort to facilitate companies being able to use email and website communication through a series of complicated manoeuvres, all of which are required as a result of their exclusion from the definition of near-universal channels of communication. Governance Institute is of the view that if email and website communication were considered near-universal channels of communication, the complexity of the proposals falls away and a streamlined and simplified reform can be introduced.

Moreover, we are of the view that the complexity inherent in the current proposals does not facilitate shareholder communication, as it provides for companies to be communicating with their shareholders in very different ways. A shareholder would have no certainty as to how the law operates in relation to the delivery of meeting materials, unless they were a legal specialist. While corporations law needs to be able to respond to changes in technology, shareholder demand and markets, it also needs to have a degree of predictability so as to ensure sufficient certainty as to the existence of shareholder rights and the permissible methods of delivery of meeting materials, leading to minimal transaction costs for companies and shareholders and avoiding uncertainty.

We recognise that technology-neutral law is not necessarily simple to draft, and drafting laws of enduring relevance in the face of changing technology may be a good concept but difficult to achieve in practice. Even attempting technology-neutral law may enshrine issues that are peculiar to this point in time, thereby stifling incentives for evolving forms of shareholder communication and the exercise of shareholder rights.

Notwithstanding this, **Governance Institute strongly recommends** that the government recognise email and website communication as near-universal channels of communication at the present time, for the reasons set out earlier in this submission. This does not need to be explicit in the legislation, but must be explicit in any explanatory memorandum accompanying legal reform. It would also allow for a much simpler provision to be introduced. We provide our recommendation for how this more streamlined provision could work below.

Governance Institute recommends that, rather than the complicated options set out in the proposals paper, a new technology-neutral provision be introduced to the Corporations Act that provides that a company is to distribute meeting notices and materials to its members:

- using a universal or near-universal channel of communication, and
- a shareholder could opt in to receive them in hard copy.

A company would be required to ensure the meeting materials are:

- available in the public domain

[4] http://www.asx.com.au/asx/statistics/todayAnns.do

- accessible
- utilising a universal or near-universal channel of communication.

We recommend this provision be introduced to replace the three options set out in the proposals paper.

This could be illustrated in the explanatory memorandum as an obligation on the part of the company — in present circumstances given the technology we have in place currently — to place on its website in a clearly defined section and announce to the ASX (if listed):

- when the AGM will be held (as is currently the case, prior to the expiration date of an individual's right to nominate an external director)
- when the annual report and meeting materials are available online and how to access them and vote online.

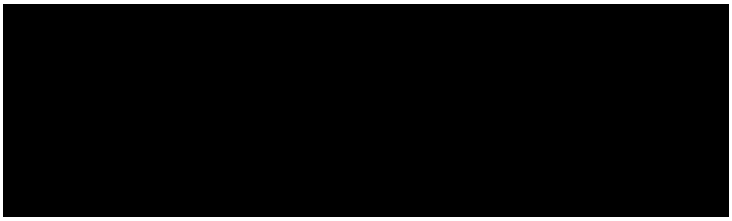
As technologies evolve, how companies disclose meeting notices and materials in the public domain and accessibly may change from website disclosure. The technology-neutral provision will allow for this.

Guidance from ASIC could be provided, from time to time, on what constitutes a near-universal channel of communication, as technologies evolve. This is preferred to reform of regulations being required, as this process is slow and less capable of responding to technological change.

We note that public listed companies, which have the largest shareholder bases, behave consistently from year to year in terms of when their AGMs are held and how they communicate with retail shareholders. In addition to all other forms of communication, many public listed companies offer shareholders and stakeholders the ability to subscribe on the corporate website to receive email notification of communications directly from the company. This would include the notice of meeting.

Our detailed comments follow.

Yours sincerely



Steven Burrell
Chief Executive

Detailed comments

1. Is the proposed framework an effective mechanism for informing shareholders of their rights, and providing them with sufficient opportunity to select their preferred distribution method?

No, it is not an effective mechanism for informing shareholders of their rights.

Governance Institute considers that the proposed framework:

- is overly complicated as a result of the exclusion of current near-universal channels of communication, including email and website communication, which sees the proposed framework introduce a complicated set of options to facilitate companies being able to move away from hard copy
- does not facilitate shareholder communication, as the flexibility it seeks to foster will make it difficult for shareholders to understand their rights in relation to the distribution of meeting materials
- relies on the regulator, the Australian Securities and Investments Commission (ASIC) providing guidance on how the law operates rather than it being evident in the legislation, which further complicates compliance understanding, and introduces the need for expensive legal advice and reliance on the regulator rather than the law.

Governance Institute is of the view that the regulatory framework governing the delivery of meeting materials should be evident in the Corporations Act. This in turn would be regulated by ASIC. However, it should not be for companies to behave differently in relation to their statutory obligations or for ASIC to decide what the law states because it is unclear.

Governance Institute recommends that there be one method contained in the Corporations Act governing how companies must deliver meeting notices and materials. Governance Institute does not support companies taking an individualistic approach to this compliance obligation. We are of the view that this has the potential to disenfranchise shareholders.

We note that virtually all public listed companies (which have the largest retail shareholder bases) communicate with their shareholders through the share registry, as the share registry holds the email and mailing addresses. Accordingly, the approach to communication is virtually identical between companies, as the two main share registries follow very similar processes. Consistency of approach would benefit not only shareholders, but also the share registries, which would not be expected to implement different systems for different companies as proposed by the paper. Any such implementation would need to be paid for by the companies (and their shareholders), rendering any savings generated by the legal reform non-existent.

2. How would the proposed framework impact on shareholder communications and exercise of voting rights?

Governance Institute is of the view that a simplified regulatory framework that accommodates evolving technologies for shareholder communication will facilitate shareholder rights. Australia is the world's sixth largest country (7,682,300 sq km)[5] and shareholders are dispersed geographically. They are frequently dispersed internationally. Shareholders expect to be able to interact with the companies in which they invest utilising current technologies. The proposal to move to a technology-neutral regulatory framework is to be commended.

However, Governance Institute believes that the proposed framework set out in the proposals paper will have a negative impact on shareholder communication and the exercise of voting rights. As we note above, the flexibility that the proposed framework seeks to foster will make it difficult for shareholders to understand their rights in relation to the distribution of meeting

[5] www.australia.gov.au

materials. The capacity for companies to take an individualistic approach to the delivery of meeting materials has the potential to disenfranchise shareholders.

Governance Institute recommends a streamlined approach to the reform of the delivery of meeting notices and materials. We are of the view that such a streamlined approach will be more effective for both shareholders and the regulator.

We recommend that a new provision be introduced in the Corporations Act that provides that a company is to distribute meeting notices and materials to its members:

- using a universal or near-universal channel of communication, and
- a shareholder could opt in to receive them in hard copy.

A company would be required to ensure the meeting materials are:

- available in the public domain
- accessible
- utilising a universal or near-universal channel of communication.

This recommendation is predicated on the government recognising in the explanatory memorandum that email and website communication currently meet the definition of near-universal channels of communication, even though this may change over time.

3. If a shareholder does not make an election of their preferred delivery method of communication when asked by the company, what other notification obligation (if any) should the company have with respect to that shareholder?

3.1. What if there is repetitive non-response from the shareholder?

3 Governance Institute is aware that the Australian Government is keen to provide for interaction with citizens online and strongly supports this initiative. We note that Australians are now very comfortable interacting with not only government agencies but also a range of private and not-for-profit organisations online. Shareholders currently receive news of vital business disclosures by way of the ASX online announcements platform and announcements on company websites.

Given the prevalent comfort experienced by Australians with online interaction, **Governance Institute recommends** that companies should not be obliged by legislation to provide hard copy materials to shareholders who neither provide a preferred method of communication (for example, email address) nor opt to receive hard copy meeting materials. **We recommend** that the legislation would deem these shareholders to have received the materials, subject to the company making the meeting materials:

- available in the public domain
- accessible
- utilising a universal or near-universal channel of communication, and
- issuing an ASX announcement (if listed).

The explanatory memorandum could clarify that making the meeting materials available on the company's website meets the current definition of a near-universal channel of communication.

Governance Institute notes that the government and companies could also issue media releases, bringing the change in law to the attention of the media, and that the media could disseminate the change. This would be particularly effective, given that many retail shareholders in particular utilise the media to ascertain news of companies in which they invest.

Public listed companies with large retail shareholder bases could also take out advertisements in national daily newspapers to advise the change in law (subject to newspapers still being

available in print), requesting shareholders to go to the company's website where they could provide their email address, mobile phone number or opt in to hard copy receipt.

Companies can also utilise social media to bring the change in law to the attention of shareholders.

Governance Institute does not recommend that the use of media releases, advertisements in national daily newspapers or social media be mandated, but be left to the discretion of each company.

3.1 The company should be obliged to notify the shareholder of the change in law and seek the shareholder's preferred method of communication once only.

We note that many shareholders are disengaged regardless of efforts on the part of companies to engage them. Research by Computershare shows that across all channels and types of shareholders, only 4.6 per cent of retail shareholders vote at general meetings[6]. Many companies see voting forms returned each year, as shareholders do not advise the company of a change of address. For example, AMP Limited notes that each year 2,000—5,000 hard copy letters to shareholders containing the notice of meeting, voting form and any other relevant meeting materials are returned to the company. Not all shareholders will engage — this should remain a shareholder choice.

Governance Institute recommends that notification to shareholders should be a one-off obligation on the company — the company should not be required to notify any shareholder again if no response is received from the shareholder. It should be a matter for each company to decide if it wishes to follow up with such shareholders.

4. Should the initial notification requirement be discontinued after a period of time as the market becomes accustomed to the new rule?

Governance Institute recommends that the initial notification requirement be in the first year only and be discontinued after that first year. That is, individual notification directed at the shareholders is required, but once only as companies transition to the change in law.

We point to the successful implementation of the 2007 reforms providing for the annual report to be made available online rather than being mailed out, for which the notification period was the first year only. Shareholders experienced no challenge with the notification being once only in the first year of the change of law.

5. How could the legislation facilitate the ability of companies to obtain the necessary details from shareholders to use alternative communication methods to post?

The legislation could facilitate the abilities of companies to obtain the necessary details from shareholders by providing that a company is to distribute meeting notices and materials to its members:

- using a universal or near-universal channel of communication, and
- a shareholder could opt in to receive them in hard copy, and
- if a shareholder does not provide a preferred communication method (for example, an email address) nor opts to receive hard copy meeting materials, they are deemed to receive the materials, subject to the company making the meeting material:
    - available in the public domain and
    - accessible
    - utilising a universal or near-universal channel of communication, and

[6] Computershare, *Intelligence Report — Insights from company meetings held in 2015 Australia*

- issuing an ASX announcement (if listed).

The legislation should not specify a technology, but the explanatory memorandum should explicitly include email and website communication in the current definitions of near-universal channels of communication.

Such explicit reference in the explanatory memorandum to current near-universal channels of communication will provide companies with the opportunity to communicate to shareholders, advising them of the change of law and seeking their email address. This will automatically lift the percentage of email addresses held by companies from the lower rate referenced in the proposals paper, as it introduces a compulsion for provision of email address that is currently lacking.

6. What further transitional arrangements (if any) are necessary?

None.

Companies are anxious to avoid ongoing the inefficient cost burdens of mailing notices of meeting to shareholders who have already become accustomed to receiving the annual report by email. This law reform would most usefully be in place by 1 July 2017 for the majority of annual general meetings that take place after this date.

7. The proposal contemplates that notification involves notice individually directed at the member.

7.1. Should a member be able to consent to a more general public notice under Method B?

7.2. Similarly, are there circumstances where a company should be able to determine general public notice as effective under Method C?

7, 7.1 and 7.2 Governance Institute is aware that the management of the transition can impose significant compliance costs on companies. For example, when the legislation changed to allow annual reports to go on the website (2007), each company wrote to their shareholders advising them of the change and that they could opt in to hard copy. This created a significant compliance burden for companies both in terms of cost and time. Moreover, in effect, each company wrote what amounted to the same letter to shareholders, some of whom would have received largely identical advice of the change in legislation from a number of companies, given they held shares in more than one company.

Notwithstanding our concern about compliance costs, Governance Institute is of the view that communication to shareholders of the notice of meeting and meeting materials goes to the heart of the exercise of the shareholder's voting rights and rights to exercise judgment in the governance of the company. As such, individual notification directed at the member is required.

Governance Institute recommends individual notification, which could be supported by companies voluntarily:

- issuing ASX announcements (if listed)
- issuing media releases
- taking out advertisements in national daily newspapers
- utilising social media to advise of the change of law.

The further notifications set out above would not be contained in legislation but would be at the discretion of companies.

Companies currently send out shareholder packs to new shareholders, requesting their preferred communication method. This would continue. The shareholder pack could also explain that shareholders will be deemed to be notified of an AGM and to have received

meeting materials should they not nominate a preferred method of communication, as the material will be available on the company's website.

This would be a one-off communication. Companies are anxious to avoid any ongoing inefficient costs attached to mailing notices of meeting to shareholders who have already become accustomed to receiving the annual report by email. This amendment would most usefully be in place by 1 July 2017 for annual general meetings which take place after this date.

8. Is it appropriate to expand the proposal to delivery of:

8.1. notices of all company meetings (i.e. annual general meetings, special general meetings, takeover meetings, meetings of members of scheme arrangements);

8.2. annual reports; and

8.3. other documents.

8.1 and 8.3 Governance Institute notes that there are significant inconsistencies in how legislation deals with the delivery of certain meeting materials from companies and trusts. For example, a company sending out documentation in relation to a scheme of arrangement can send shareholders who have requested delivery of documents by email, with a URL providing a link to the documents, whereas trusts have a statutory obligation to send the entire document by electronic means, which can present real challenges when the files are too big to be received. This has led to hard copy delivery being the default delivery mechanism.

We would like to see greater consistency introduced in relation to delivery methods specified in legislation across types of entities. We would also like to see the legislation 'future proofed' in relation to the delivery of materials relating to corporate actions, which would require technology-neutral provisions to be introduced.

We support further consultation on the expansion of the proposals to other documents, as this will also support the move by the Australian Government to support the interaction of citizens online.

Governance Institute recommends that the issues listed in 8.1 and 8.3 should be subject to further consultation, as legislative amendment in this area presents particular challenges that will need more detailed consideration.

8.2 We have two different responses to this question, which depend on how the government proceeds in response to stakeholder feedback.

a) If the proposed framework set out in the proposals paper becomes legislation, **Governance Institute recommends** that the provisions governing the delivery of annual reports remain unchanged, due to the complexity of the proposed framework.

b) If a streamlined proposal becomes legislation, as recommended by us, **Governance Institute recommends** that the provisions governing the delivery of annual reports be amended to align with the new provisions governing the delivery of notices of meeting and meeting materials.

Other considerations

Amount of notice

Governance Institute notes that the law differentiates between proprietary, public listed companies and public unlisted companies for the purpose of notice of meetings. The 28-day notice period applies to public listed companies only. The extended notice period was introduced to provide more time for institutional investors to consider resolutions and vote, given the 'chain of hands' a hard copy notice of meeting had to go through.

At the time that the 28-day notice period was introduced for public listed companies, investors advised that a principal problem for shareholders, especially foreign investors, in exercising voting rights was the length of time it took for investors to receive, consider and execute shareholder material. The Investment & Financial Services Association Ltd (now the Financial Services Council) claimed that delays were caused in a number of ways including:[7]

- The requirement that the material 'percolate' through the 'custodian chain', that is, from the registered shareholder custodian to the investment manager with the voting authority
- The consequential shortening of the period for receiving and dealing with shareholder information due to weekends and holidays
- The bulk and complexity of the material
- The time taken for the return of voting instructions to the registered custodian and the required completion of proxy forms giving effect to the voting instructions received from multiple investment managers
- The need to mail proxy forms so as to reach the registry or company 48 hours before the meeting
- 'Log jams' caused by the voluminous material investment managers receive during the 'season' for proxy voting.

The change came into force almost 20 years ago (1998). The Parliamentary Joint Senate Committee on Corporations and Financial Services recommended against the change at the time, noting that technology should shorten the period of notice, not lengthen it. The report stated:[8]

> In the view of the PJSC the doubling of the period of notice from 14 to 28 days has added considerably to costs and inefficiency in company meeting cycles. It was argued that the extension of the period of notice ran counter to the flow of modern technology which has the capacity to shorten periods of time as opposed to lengthening them. The PJSC believes that increased use of electronic communication provides a more appropriate solution than extending the notice period for meetings.

Given the move away from hard copy, Governance Institute is in full agreement with the Parliamentary Joint Senate Committee that technology should shorten notice periods, not lengthen them. We also note that managed investment schemes and listed trusts have a notice period of 21 days, and that this does not appear to create any difficulties for investors. The differing provisions applying to companies and managed investment schemes means that stapled entities have to operate in conflicting regulatory frameworks.

An additional argument in favour of shortening the notice period to 21 days is that it will facilitate the AGM taking place closer in time to the year-end, which in turn makes reporting to shareholders at the AGM more relevant. Currently, companies would be ready to have an AGM after the annual report is issued to ASX (often now with the preliminary results in mid-to-late August). They are delayed by the time it takes for printing then mailing the notice of meeting and meeting materials to fit the 28-day notice period. If printing and mailing the notice of meeting was eliminated, we estimate that AGMs would be approximately three weeks earlier on average. This would give shareholders far more current information about corporate performance.

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[7] Parliamentary Joint Senate Committee on Corporations and Financial Services, *Report on matters arising from the Company Law Review Act 1998*, October 1999 http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/1999-02/complawreview/report/c07

[8] See Footnote 7

However, as the notice period is one that would require input from institutional investors (as well as retail investors), who have become accustomed to the longer notice period for public listed companies, and who may be reluctant to consider changing their habits in relation to how the notice of meetings passes through the 'chain of hands', we are of the view that it would be best to move to technology-neutral delivery of meeting materials before implementing further change. The change to technology-neutral delivery of meeting materials will make it evident that not as much time is required for the materials to pass through the 'chain of hands' when it is delivery digitally.

Governance Institute recommends that:

- the new legislative provisions applying to the delivery of meeting materials should be agreed and introduced, and
- following this, further consultation should be undertaken on seeking consistency in provisions governing notices of periods.

Nominees/custodians

The proposals paper does not specifically address the impact on nominees and custodians. However, as noted in our comments above on the period of notice, Governance Institute is of the view that the increased use of technology would help to streamline and manage this aspect of the meetings process. While nominees and custodians are increasingly utilising digital delivery and online voting, this should be further encouraged, as it facilitates the speed with which meeting materials move through the 'chain of hands' and also provides an audit trail for voting results. This in turn enhances the transparency of voting outcomes.

Governance Institute strongly supports nominees and custodians moving away from expecting delivery of meeting materials in hard copy and providing voting forms in hard copy. Computershare's report on the 2015 AGM season notes that 45.8 per cent of the issued capital lodged votes using their online platform (Intermediary Online), which was up by 39.7 per cent from the 2014 AGM season.[9] In ASX200 companies (which have the largest shareholder bases, including retail shareholders), there is a significant weighting of issued capital held by large institutional investors.

Institutional investors holding their securities through nominee accounts are already moving to online interaction. The Computershare report states that:

> Custodians, wealth managers and superannuation administrators submit their votes securely and receive an immediate confirmation of receipt. These votes flow straight through to the issuer's register so investor relations teams can monitor votes as they come through.

Voting online

The proposals paper does not specifically address voting, but Governance Institute is strongly of the view that the proposal to move to technology-neutral delivery of meeting materials would be enhanced if it was combined with a change in legislation to:

- provide for online voting, by either online proxy lodgement or online direct voting, as the default option, but
- shareholders would be able to request hard copy voting forms.

Importantly, companies could still elect to hold voting through traditional means. It would not be compulsory but the default setting.

The current problems with lost votes fall away as institutional shareholders vote online. The Computershare report states that:

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[9] Computershare, *Intelligence Report — Insights from company meetings held in 2015 Australia*. The data contained in the report is based solely on Computershare's client meetings.

> Intermediary Online's real time reporting function also identifies over-votes, alerting users when the number of votes lodged is greater than the number of securities held in the account. Over-voting often occurs in the last 96 hours before a meeting, so it is critical to identify and rectify these issues quickly.

Adjustments could also be made to the voting entitlement date vis-à-vis the poll deadline (for example, the voting entitlement date could be a business day or two prior to the poll deadline) to ensure that custodians and other nominees have time in which to finalise and verify the voting instructions of the underlying beneficial holders.

Online voting is already taking place. In the 2015 AGM season, Computershare reports that[10]:

> Traditional channels are declining in favour of online voting, with desktop voting approaching 30% … Mobile voting continues to grow at a steady rate, increasing by 26% from 2014 to 2015. Online voting now makes up 31% of the voting population.

The law is behind market practice. The law needs to facilitate the use of technology by making online voting the default.

Non-physical meetings for smaller companies

While this matter is not canvassed in the discussion paper, Governance Institute is of the view that it is worth considering the challenges facing many smaller companies which struggle to attract shareholders to attend an AGM. Some even struggle to maintain a quorum (when directors are barred from voting their shares on resolutions such as the one to adopt the remuneration report).

We are of the view that consideration should be given to public listed companies outside of the ASX300 (or other similar measure such as market capitalisation) being able to elect to not hold a physical meeting but to hold a non-physical meeting instead. The introduction of mandatory poll voting would be required, as would a safeguard for meetings to still be validly held, despite any technological glitches that may unexpectedly affect individual participation.

The intention to hold a non-physical meeting (and how it would be held, for example, webcast or via telephone briefing) would be required to be announced to ASX six months before the AGM date and published on the company's website.

Shareholders would be given the right to notify the company if they want a physical meeting. If within one month 100 shareholders (or shareholders representing five per cent of issued capital) request a physical meeting, the company would be required to hold a physical meeting.

While ensuring that the cost of holding a physical meeting is not imposed on those companies that attract very few shareholders, it does not hinder shareholders being able to call a physical meeting if they have concerns with the board's stewardship and are seeking to voice their concerns.

[10] See Footnote 9