



Australasian Centre for Corporate Responsibility

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Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Via email: economics.sen@aph.gov.au

8 November 2021

RE: Submission to the inquiry into the provisions of the Corporations Amendment (Meetings and Documents) Bill 2021

To the Committee,

Thank you for the opportunity to provide comment on the inquiry into the provisions of the Corporations Amendment (Meetings and Documents) Bill 2021.

The Australasian Centre for Corporate Responsibility (ACCR) is a registered charity with the Australian Charities and Not-for-profits Commission [REDACTED]. ACCR invests in and engages with Australian listed companies in regard to their performance on various environmental, social and governance (ESG) issues. ACCR regularly files shareholder resolutions with listed companies, and attends, asks questions and votes at listed companies' annual general meetings.

ACCR previously made a submission to Treasury on these measures in October 2020.

Summary

ACCR supported the temporary waiving of existing rules to enable virtual Annual General Meetings (AGMs) for ASX-listed companies during the COVID-19 pandemic.

We have observed a wide range of corporate behaviour in virtual AGMs as companies and registry providers have experimented with various formats and technologies.

In summary, we believe that the provisions of the Bill relating to electronic service and execution of documents make practical sense, provided that adequate safeguards are in place.

The interpersonal element of physical shareholder meetings is an important component of the corporate governance environment. This is widely recognised and, anecdotally speaking, is a rare point of consensus in the shareholder community.

The proposed Bill would permit companies to adopt virtual-only proceedings where their constitution allows for it, thereby avoiding any in-person, transparent interactions with shareholders. This is not in the interests of shareholders of public companies, and is not supported by ACCR.

We believe there is no obvious case to justify allowing companies to do away with physical meetings (like AGMs) altogether.

ACCR agrees with the proposed timing of the Bill coming into effect on 1 April 2022, approximately, two years since the start of the COVID-19 pandemic. It will capture the vast majority of AGMs in 2022 occurring after 1 April 2022.

We address various aspects of the Bill below.

Proposed changes to facilitate electronic signing and transmission of documents

ACCR supports these changes as facilitative of expedient and efficient communications in the modern corporate environment.

Advantages of a virtual access component to meetings

Hybrid physical-virtual meetings have improved access to meetings for those not living in major cities, who are less able to travel, or who have mobility issues.

As we all move to limit our carbon footprints, the possibility of virtually attending the AGM of an ASX-listed company being held on the other side of the continent has been a welcome development.

ACCR is supportive of hybrid physical-virtual meetings rather than specifically physical or virtual meetings alone.

At 1.9 in the Explanatory memorandum, it states that:

All meetings, regardless of how they are held, must give the members as a whole a reasonable opportunity to participate. This includes holding the meeting at a reasonable time and place and using reasonable technology to conduct a virtual meeting and connect different physical locations together.

ACCR believes **all** members must be given a reasonable opportunity to participate in the meeting. The current wording allows companies to ignore or oppress minority shareholders.

Importance of an in-person component to meetings

The often-quoted dictum of Bowen CJ in *Re Compaction Systems Pty Ltd* [1976] 2 NSWLR 477, 485 is a succinct summation of the value to shareholders of physical AGMs and EGMs:

The right to receive notice of a meeting, and to attend, and to be heard, is not an insubstantial right. The right to advance arguments and to influence the course of discussion may in some circumstances have an effect, even a decisive effect, on the decision reached.

The asking of questions in person affords shareholders a right of reply. If shareholders feel a question has not been sufficiently answered they are able to respond or follow up. What is said may influence the questions or voting decisions of other participants. They are able to assess the entire board's non-verbal communication and body language. The subtlety and nuance of this dynamic has been lost in the virtual-only meetings conducted in 2020-21. When questions are submitted in writing and placed in a queue, there is no genuine opportunity for back and forth or the elaboration of information and experience.

In cases of corporate misconduct that have transpired over the last several years, boards of companies that have held physical AGMs have been held to account at their AGM in a way that simply would not have been possible in a virtual-only setting. The clearest examples of this were the AGMs of Australia's four major banks and AMP following the Banking Royal Commission, which saw shareholders interrogate the boards of those companies on instances of mismanagement. That important interaction has proved to be of value not only to shareholders, but to the whole financial services industry.

It is well understood that institutional investors have greater access to boards and executives than retail shareholders. The physical AGM is possibly the only opportunity for retail shareholders to interact with the board and management. In some cases, retail shareholders have been able to glean commitments from the board of a company, where they have previously been frustrated by companies' investor relations teams.

At 1.93 in the Explanatory memorandum, it states that:

The new law also makes explicit that the technology used to facilitate virtual attendance must allow members to exercise any preexisting right that they may have to ask questions or make comments (such as under sections 250S and 250T) both verbally and in writing. For example, the company could satisfy this requirement by offering members both the opportunity to ask questions orally by dialling into a phone hookup and the opportunity to type their questions into a chat function. To avoid doubt, this provision does not create any new right for members to ask questions or comments, but simply relates to the manner in which any pre-existing rights can be exercised. [Schedule 2, items 11 and 22, sections 249S(7) and 252Q(7)]

We believe this allows companies too much discretion in determining how members may exercise their rights at meetings. The Bill should require companies to provide both phone and online access to allow members to ask questions verbally or in writing.

Experience of virtual AGMs

ACCR has attended numerous virtual meetings in 2020-21 and they have varied widely from company to company. From the ability to access the meeting through to the general conduct of the meeting, many companies and their registries have been more concerned with the performative optics of a virtual meeting than in providing shareholders with a reasonable opportunity to question the board.

In our experience, registries have sometimes been inattentive to the task of facilitating attendance at virtual meetings, particularly for proxy holders. Despite limitations on physical gatherings for more than 18 months, registries continue to impede the access of proxy holders to meetings. In some cases, proxy holders have not been able to access a virtual meeting without the confidential shareholder identification number of the shareholder, information that the shareholder traditionally does not have to disclose to their proxy. Many companies have required proxy holders to phone the registry in advance for a unique access code. This system has proven to be not very robust, and resulted in many proxy holders unable to attend and ask questions at meetings.

In ACCR's opinion, best practice allows shareholders and proxy holders to ask questions directly to the board in their own voice and to have an opportunity for live interaction. Of the many virtual AGMs that ACCR has attended throughout 2020-21, only Origin Energy, Rio Tinto and Macquarie Group provided a facility for shareholders to ask their questions in person over the phone, in addition to the online platform.

ACCR experienced several recurring issues with virtual AGMs, which can be summarised as follows:

1. Unstable technology with poor audio and/or video
2. Most companies only accepted questions submitted online, preventing interaction with the Board (with the exceptions of Origin Energy, Rio Tinto and Macquarie Group)
3. No company displayed questions submitted by shareholders
4. Many companies simply ignored certain questions, or aggregated questions on a similar subject
5. Other than Origin Energy, Rio Tinto and Macquarie Group, shareholders had no way of interrogating the response provided or to ask follow up questions
6. Questions were not asked at the relevant item of business, even if the item number was included in the question
7. Proponents of shareholder resolutions were not permitted to address the resolution
8. Voting results were not published during the meeting

The Bill should seek to correct these problems.

Though some company boards may wish to avoid the temporary discomfort of a difficult question asked from the floor of an AGM or in the voice of the shareholder joining virtually, the asking of such questions is an important corporate governance mechanism and should be recognised as in

the interests of companies, their shareholders, and society. The Bill should therefore go out of its way to protect this dynamic.

Proposal to publish all questions put to the meeting

The proposed Bill does not address shareholders' and proxies' loss of opportunity in a virtual meeting to interact with a board in real time and to ask a follow up question when they feel a question has not been adequately addressed.

In our experience, ACCR representatives have submitted questions to a company that have not been put to the board in the meeting. Current virtual meeting facilities only allow participants to see the questions they themselves submitted, and not those of other shareholders. It is therefore impossible to gauge the volume of questions submitted against those being answered. ACCR suggests that all questions submitted to the meeting are published during the meeting and shortly thereafter. This would provide a layer of accountability, by allowing shareholders to assess how many questions are submitted, on what subjects, and to draw their own conclusions about what questions were answered and why.

Virtual meetings should operate a phone line to allow participants to ask a question in their own voice and to allow them to follow up if they feel their question requires further response. All questions submitted in writing should be read in full and properly attributed.

ACCR would welcome the opportunity to discuss these matters further.

Yours sincerely,

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