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Consultations by Treasury: *Making permanent reforms in respect of virtual meetings and electronic document execution*

Lighter Footprints Inc welcomes the opportunity to contribute to the consultations that Treasury is currently undertaking into the exposure draft bill *Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020*. We note that the purpose of this legislation is to make permanent changes to the Corporations Act 2001 in relation to virtual meetings and electronic document execution.

Who is Lighter Footprints Inc

Lighter Footprints Inc is a community group with a membership and supporter base of around 2500 residents from Boroondara and Whitehorse municipalities in Melbourne. The group came together in 2006 to see what we could do to encourage a stronger response by governments and others to the serious challenge of climate change.

We see this remit as covering the actions of the corporate world as well as those by the many other members of our community. The decisions and policies of business, whether large or small and in whatever field of activity, have significant long-term impacts on our environment and provide major opportunities to adapt to and mitigate the impact of the existential risk of climate change.

Our position

We acknowledge the advantages to companies of being able to conduct virtual meetings with their stakeholders, including with their shareholders. At the same time, we consider the claims made to support these changes are not sufficiently substantial to justify their likely detrimental effect on meeting outcomes. Virtual-only meetings may be more convenient for the company but they run the risk of less transparency and reduced accountability.

We are in full agreement with The Australian Council of Superannuation Investors Limited, which is reported as stating that

“Investors support a review of how AGMs are conducted, and proposals to move away from hard-copy AGM materials make sense. However, changes to the way AGMs are held requires a longer consultation. We need time to ensure the lessons from the temporary provisions are appropriately incorporated into the permanent rules”

We recommend therefore, that consideration of these proposed amendments be delayed until there can be a more comprehensive examination of the impacts of the temporary measures put in place as a response to the coronavirus pandemic. This may not be evident until after the end of the current AGM season.

The significance of Annual General Meetings

The annual general meeting (AGM) is the one time in the year when shareholders and company management are brought together to consider and discuss matters of significance to the company's directions, viability and sustainability. It is the forum where the board and executive are held to account for their actions and an essential check on the integrity of the company's governance and decision making.

It is therefore essential that these meetings foster transparency and scrutiny by ensuring discussion and information flows freely in both directions.

What is the problem to be solved?

The Regulation Impact Statement Exposure Draft Explanatory Materials indicates that these changes are intended to solve the '*rigidity of the regulatory settings which prevents companies from using the most efficient technological mix to meet their regulatory obligations*'. This supposed rigidity is blamed for increases in the cost and time needed to hold meetings and to have documents signed and does not allow companies to meet the increasing desire of some shareholders to only communicate electronically.

These benefits reflect a desire to lessen the inconvenience these meetings cause for the company but pay little heed to the purposes for which annual general meetings are held.

These amendments also fail to address the real problem of AGMs. A more important issue is the low level of participation by shareholders in these meetings and their failure to provide a public forum for visible and meaningful scrutiny of company operations or accountability.

The importance of public scrutiny

The ability to scrutinise the decisions of the company at an AGM is of particular interest to those members of Lighter Footprints who are self-funded retirees and want to invest ethically to reflect their commitment to action on climate change. They are concerned that an AGM conducted using solely virtual technology will severely limit their meaningful participation in the meeting and capacity to question the company on its operations, activities and future directions. Discussion on such topics can become quite complex and difficult to track and manage in a virtual setting.

Our concerns with virtual meetings

We are not opposed to virtual meetings but want to ensure that they are conducted in ways that maximise transparency, accountability and accessibility. The major dangers we see with this approach include the following:

- **The ability of management to manipulate the agenda of a meeting and reduce opportunities for shareholder participation.**

There are many ways that this can be done including restricting the structure of the agenda to focus on uncontentious issues; limiting the length of the meeting to allow only enough time for formalities; reducing the time allocated to questions; controlling

the number of questions that can be asked on a particular topic; requiring questions to be submitted in a particular format; imposing a restrictive cut-off date for receipt of questions; and a ban on follow-up questions.

While virtual AGMs have been a necessity during the pandemic, they seem to be being used in a number of cases to diminish the ability of shareholders to ask questions. For example, we are aware of:

1. CBA limiting the length of questions by the use of a restrictive text box; and restricting the length of the AGM to 2 hours;
2. Origin Chair deciding to take no more questions on climate and Beetaloo;
3. BHP rolling all oil and gas questions into one and not addressing the specific details of each;
4. Whitehaven not offering the opportunity to ask questions as each individual resolution was put to the meeting, and not showing a resolution to the meeting on the grounds that a vote on it depended upon the success of prior resolution;
5. Santos failing to address questions submitted by Polly Cutmore, Gomeroi Traditional Owner, and some from health professionals; and
6. generally, restrictions being placed on the ability to ask follow-up questions.

- **The difficulty of dealing with a larger group in a virtual meeting**

Virtual meetings are better suited to smaller groups and can be more difficult to manage and run as the size of the group increases, especially if there is an expectation that attendees can actively participate through questions and discussion.

- **The lack of social interaction between participants**

Without face to face contact, it can be difficult to develop trust and cohesion in a virtual meeting. It also hinders communication on complex topics by eliminating the subtleties and responsiveness of face to face communication.

- **The need to be relatively experienced in this technology and to have clear protocols for running the meeting so that all participants feel sufficiently comfortable to participate effectively**

While more and more people are becoming familiar with this technology, there are still many who seldom use it and are not at ease when confronted by this new way of doing things.

- **The use of ‘reasonable opportunity’ in the exposure draft as the standard as to whether this technology gives all those entitled to attend the capacity to be present and able to participate effectively.**

This measure is open to a considerable degree of interpretation as to what is reasonable. ‘Reasonable opportunity’ to participate in virtual meetings is too difficult to monitor and redress in default, and the only realistic solution is to make virtual-only AGMs unlawful except in emergencies.

Our recommendations

We recommend that:

1. Virtual-only meetings not be permitted for the conduct of annual general or special meetings at any time in the future, except as required by an emergency including of course a pandemic
2. Further research and investigation be undertaken to assess whether virtual meetings can adequately fulfil the governance requirements of an AGM including:
 - a. whether there are sufficient benefits to outweigh the disadvantages of this style of meeting;
 - b. what measures would need to be put in place to sufficiently mitigate the disadvantages.
3. Attention be paid to identifying measures that will encourage more shareholders to attend AGMs and allow them to be more actively involved in the meeting proceedings.
4. Regulations relating to the organisation and conduct of the meeting be developed to cover such things as:
 - a. the length of the meeting to be sufficient to ensure all submitted and follow-up questions can be answered;
 - b. the availability of a complaints process;
 - c. the publication of all motions and motion poll results on-line;
 - d. verbal submission of questions by on-line shareholders and proxies during the meeting;
 - e. a limit of 2000 words for written questions by on-line participants.
 - f. development of a good practice guide for the virtual components of meetings; with alleged breaches to be considered as grounds for complaints to ASIC.

Thank you for this opportunity to contribute to this discussion. If you wish to discuss any aspect of this submission, please contact Mr Leigh Naunton on ph: 0425 722 272 or by email at leigh@naunton.name.

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