

Wednesday 4 November 2020

Hon Josh Frydenberg MP

Treasurer

Parliament House

CANBERRA ACT 2600

via email: [josh.frydenberg@treasury.gov.au](mailto:josh.frydenberg@treasury.gov.au)

Dear Treasurer,

### **Virtual Annual General Meetings (AGMs)**

I am writing in relation to the current consultation on virtual meetings and comments recently attributed to you on the issue in the *Australian Financial Review*.

These reports suggest continuing requirements for physical AGMs as a response to investor concerns about the practices of some listed companies under the current temporary regulatory relief.

Our strong support for the modernisation of AGMs reflects that these requirements apply to the hundreds of thousands of Australian companies who are required to hold annual meetings under the law, not just listed entities.

The rationale for the policy reform is sound. To accelerate economic recovery, Australia needs a regulatory environment that can adjust from crisis settings to re-set for growth. Modernising Australia's corporate law is one clear priority, with benefits to stakeholders and organisations across the community.

Our law should be modernised so that AGM requirements are 'platform agnostic'. At the same time, we would welcome clarifying safeguards on accountability and transparency for listed companies through regulatory guidance, regulation or ASX requirements, so that the benchmarks for best practice are clear and boards can be judged against those standards.

The AICD considers AGMs to be a key governance and accountability mechanism for companies. They are, and should remain, a key feature in an organisation's governance calendar. AGMs are a critical forum for shareholders/members to hold companies, board and management to account for their performance, to hear directly from the Chair and management, and to vote on the composition of the board and key governance resolutions.

That does not necessitate imposing a particular format of a member meeting into legislation. It is important that organisations have the flexibility to adopt the best meeting for their circumstances, shareholders/members, and stakeholders. Regulation should focus on the outcomes and purpose of meetings, while enabling flexibility in delivery and technological neutrality.

Given the legislation covers a broad range of organisations, from small not-for-profit organisations, limited by guarantee to large listed organisations, we consider it appropriate for the Act to set the principles and framework for members as a whole to participate in meetings. They should not impose overly prescriptive requirements noting its application to smaller and not-for-profit entities and the risk of legislation becoming outdated as technology continues to update.

We understand why investor representatives may have concerns with virtual meetings, including the accessibility these meetings offer to individual shareholders. We agree with investor concerns that virtual AGM formats must retain the ability of members as a whole to challenge and question boards and management. It is critical that technology is used in a way that promotes accountability and does not disenfranchise investors, including retail shareholders. Clearly, some of the meeting practices reported by investor groups do not meet these objectives. By contrast, during 2020 many listed companies have also shown that it is possible to hold virtual meetings in a way that increases, rather than decreases, shareholder participation.

We are concerned, however, that if a hybrid format for AGMs were mandated for virtual participation it could lead some entities to revert to traditional physical meetings as the 'lowest denominator', sacrificing the potential benefits of virtual meetings (including accessibility and broader participation) given the added costs.

The AICD would encourage the Government to consider additional regulatory guidance or direction on virtual AGM practices for listed entities, rather than retaining legislative requirements that require all organisations to hold physical meetings. Such guidance could be via ASIC, ASX Corporate Governance Principles or ASX listing requirements.

We would appreciate the opportunity to discuss these options and would be pleased to bring experienced director perspectives to discussions, as relevant.

### Next steps

The AICD has provided a submission to the Treasury consultation and will continue to liaise with Treasury officials to support reform considerations.

Our Head of Government Relations, Matt Pritchard, will be in contact with your office to ascertain availability for a further discussion. Matt can be contacted on [MPritchard@aicd.com.au](mailto:MPritchard@aicd.com.au) or I can be reached directly on [A Armour@aicd.com.au](mailto:A Armour@aicd.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Angus Armour', with a long horizontal line extending to the right.

**Angus Armour FAICD**  
Managing Director and CEO