

14 July 2020

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Lyn Beverley
Committee Secretary
Senate select committee on financial technology and regulatory technology
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Beverley,

**Senate select committee on financial technology and regulatory
technology**
Answers to questions on notice

We refer to the appearance of Governance Institute of Australia (Governance Institute) before the Inquiry Hearing of the Senate select committee on financial technology and regulatory technology on 30 June 2020.

Additional information

We have had an opportunity to read the transcript of evidence given to the Committee by Ann Bowering of Computershare Limited and Lysa McKenna of Link Group and would like to provide additional information on two matters that were referred to in their evidence.

Technology neutral distribution of meeting materials

At page 17 of the transcript of the evidence the Chair asked Ms Bowering to provide information on notice about the specific sections of the Corporations Act that needed to be changed to provide for technology neutral distribution of meeting materials and how those changes could be made.

In May 2016 Treasury issued a proposal paper *Technology neutrality in distributing company meeting notices and materials* and undertook extensive consultation in 2016 and 2017. Our members were actively involved in the consultation process providing submissions and attending roundtables at which the challenges companies faced in communicating with their shareholders were discussed at length as well as the proposed legislative solution.

Governance Institute provided a proposed legislative solution at that time which was included in our submission dated 16 June 2016 [Technology neutral](#).

We recommend that sections 249J (3) and (3A) of the Corporations Act be amended to provide 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.

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
- issuing an ASX announcement (if listed).

Our 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.

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 recommend 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.

The initial notification requirement should 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 (see section 314 Corporations Act). Shareholders experienced no challenge with the notification being once only in the first year of the change of law.

Membership of CHESSE Stakeholder Group

During her evidence at page 21 of the transcript, Mrs McKenna referred to the CHESSE Stakeholder Group of which some of the witnesses were members.

Governance Institute is a member of the CHESSE Stakeholder group.

Answers to questions on notice

Governance Institute notes that we were asked to provide answers to the following question on notice (we refer to page 15-16 of the transcript of the Inquiry Hearing)

CHAIR: Taking you back to your comments about blockchain, one of the things the committee is looking at is how we can use blockchain in the economy. I would be grateful for any thoughts you have that you can provide on notice as to how blockchain could be of assistance in your industry?

The evidence was in the context of verifying and authenticating the execution of documents. There are currently mechanisms within many of the secure portals used by boards which enable secure signatures to be placed on minutes and other documents. If the *Electronic Transactions Act* were to apply to the *Corporations Act*, the safeguards under the Electronic Transactions Act would apply.

However, technologies are emerging such as blockchain, which can be applied to existing data sets such as contracts and business processes which have the potential to reduce red tape and create efficiencies. These technologies also enable the parties to know the provenance of the documents in question. Many existing processes are currently highly manual but could be re-engineered using new technologies to be more secure, faster and executed more efficiently. Enabling and encouraging development of these types of technology in Australia has the potential for export outside Australia.

Governance Institute thanks the Senate Committee for the opportunity to provide answers to questions on notice and additional information and would be pleased to be of further assistance if called upon.

Yours sincerely

Catherine Maxwell
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