

17 June 2020

Committee Secretary
Senate Select Committee on Financial Technology and Regulatory Technology
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: fintech.sen@aph.gov.au

Dear Sir/Madam

Inquiry into the Financial Technology and Regulatory Technology sector

Thank you for the opportunity to make a submission to the Select Committee on Financial Technology and Regulatory Technology.

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership reflects the diversity of Australia's director community: while 192 of the nation's ASX 200 companies have one or more AICD members serving on their board, our membership of more than 45,000 is drawn from directors and leaders of not-for-profits, large and small businesses and the government sector.

Over recent months, the AICD has been advocating on urgent regulatory issues and relief required to support boards and organisations through the current COVID-19 crisis, to enable virtual operations and accommodate the impact of public health and community safety measures. We have emphasised the importance of the regulatory environment supporting boards and organisations to focus on financial sustainability, survival and disruption.

Australia is now charting a path to a COVID-safe economic recovery. That path must focus on long-term growth underpinned by technological innovation and a balanced regulatory environment.

This submission focuses on the AICD's perspective on economic, regulatory and national reform priorities to accelerate growth in the post COVID-19 recovery period, including:

- Modernising the *Corporations Act 2001* (Cth) (**Corporations Act**) to permit virtual general meetings, electronic distribution of meeting notices, electronic signatures and electronic execution of corporate and governance documents; and
- Removing barriers and promoting commercial risk-taking and innovation to boost growth.

1. Regulatory Re-set: Modern, Fit-For-Purpose Regulatory Environment

Australia needs a regulatory environment that can adjust from crisis settings to re-set for growth. In welcome recognition of the challenges facing organisations during the COVID-19

crisis period, the Government has used emergency COVID-19 powers to provide temporary regulatory relief in critical areas, from insolvency liability to enabling virtual general meetings.

While critical in the short-term, this period of temporary relief also provides insights into where regulation has become dated and inflexible.

To accelerate economic recovery, Australia needs to step away from incrementally adapting to developments in technology and innovation, towards an agile, updated and fit-for-purpose regulatory environment that fosters innovation and encourages prudent risk-taking. A regulatory re-set is required, rather than a return to pre-COVID settings, to incentivise and support growth and job-creation.

Modernising Australia's corporate law is one obvious priority, with benefits to stakeholders and organisations across the community. Just as COVID-19 disruption has accelerated digital and virtual strategies across all organisations, there is an important opportunity for a significant and permanent upgrade to our governance and corporate law settings.

1. Modernise the Corporations Act

The AICD strongly endorses the temporary changes introduced by *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* that allow companies to hold fully virtual general meetings, deliver notices of meetings electronically and execute documents virtually.

In the AICD's view, these changes highlight the need for the modernisation of outdated Corporations Act requirements and there is a compelling case to make these changes permanent via legislative amendment post the COVID-19 period.

The use of technology allows companies to be nimble in adapting to business and shareholder needs, including where public health, travel or security restrictions would otherwise prevent effective meetings. Going forward beyond this crisis period, there is capacity for technology to improve accountability through visibility and accessibility, and to improve efficiency and manage compliance costs.

Virtual general meetings

The AICD recommends that capacity for organisations to hold virtual and hybrid general meetings, including annual general meetings (**AGMs**) be made a permanent feature of Australia's regulatory environment.

The Treasurer's emergency relief has provided much-needed certainty to companies from all sectors dealing with the challenges of holding valid meetings during the pandemic. It extended the welcome 'no-action' regulatory stance adopted by ASIC on virtual meetings to address company concerns about complying fully with the technical AGM requirements of the Corporations Act and individual company constitutions. The legislative relief provides certainty for shareholders, members and companies that virtual or hybrid general meetings can be run with confidence until 5 November 2020, supplemented by the regulator's guidance on participation and process.

We note that the current temporary relief will expire during the 2020 AGM season, making a determination on extension (for example, to the end of the 2020 reporting period) or permanent reform timely and important.

In our view, companies should have the capacity to adopt the best format for meetings for their circumstances, shareholders and members and stakeholders, including holding physical, hybrid or virtual meetings. We believe that regulation should focus on the outcomes and purpose of meetings, while enabling flexibility in delivery and technological neutrality.

AGMs, in particular, are one of the primary events in an organisation's governance calendar. They are a critical forum for shareholders or members to hold companies, board and management to account for their performance and reporting, to hear directly from the Chair and management and to vote on the composition of the board and key governance resolutions.

However, there are clearly opportunities to reinvigorate the format. A 2015 Computershare survey found fewer than 1 per cent of shareholders attended AGMs (with a declining trend of attendance over a decade) and less than 5 per cent voted. The AICD's most recent *Director Sentiment Index* survey found that over a third (38%) of directors consider the current AGM system to be dysfunctional.

Reform to allow companies to hold virtual and hybrid general meetings on a permanent basis could contribute to reinvigorating company meetings, providing companies with flexibility to use the best format for their circumstances and stakeholders. There could be a range of drivers for companies to adopt hybrid or virtual meeting formats, including removing geographic and physical barriers to attendance by retail shareholders and members and increasing questioning and engagement via electronic means.

Providing clarity on capacity to hold company meetings in virtual, hybrid or physical formats would also bring us into line with other countries - such as the US, Canada, Spain, South Africa, Denmark, Ireland and New Zealand. Increasing use of virtual participation could also deliver cost savings, with a physical AGM costing between AUD \$250,000—\$500,000 for ASX200 companies.¹

The AICD recognises that the participation of shareholders, as the collective owners of a company, in general meetings is a crucial component of good governance. It is important that companies that choose to adopt a virtual component as part of their general meeting, or run a fully virtual meeting, ensure that the facilitating technology and process affords shareholders or members a reasonable opportunity to participate.

There is an opportunity for companies, shareholders and members and regulators to work together to guide participation and deliver the benefits of virtual and hybrid meetings. Legislative amendments should be drafted in a technologically neutral way that does not lock us into a fixed modality (thereby risking future obsolescence). Removing the paper and physical bias from the Corporations Act and facilitating a fast-track of constitutional modernisation on company meetings would be a beneficial and overdue step.

Importantly, in the AICD's view, regulations should enable companies to determine their preferred format by focusing on the outcomes and purpose of meetings, rather than prescribing or mandating particular forms of delivery.

¹ Lexis Nexis and Governance Institute of Australia, 'Does the Annual General Meeting (AGM) need to become an eAGM?'

Electronic distribution of meeting notices

Shareholder involvement in meetings is dependent upon the effective distribution of meeting notices and documents. The AICD believes there is significant scope to enhance these processes through technology and strongly encourages the Corporations Act be amended so that distribution requirements for meeting notices and materials can be provided electronically – via both general notice to the public and (where members/shareholders opt-in) email or physical mail to individual shareholders.

In our view, allowing companies to provide notices of meetings to shareholders electronically will produce significant cost savings and reduce postal delay for shareholders in rural and regional communities, as well as have a positive environmental impact. In this regard, we endorse the Governance Institute of Australia's submission to the Senate Select Committee.

Electronic signatures

We also support making electronic signatures permanent, including permitting all legal documents and forms to be in electronic form and electrically signed (including allowing split execution of deeds and other legal documents). Again, this will improve efficiency and reduce costs, which will ultimately benefit shareholders and consumers.

While these kinds of proposed changes may seem minor in nature, they go to the overarching need of the Australian economy to utilise technology more effectively and keep up with our global counterparts. The less time and money spent on mechanical technical requirements, the more that can be spent on driving strategic growth.

2. AICD – USYD Innovation Study

In September 2019, the AICD published a first of its kind, in-depth look into innovation in Australian boardrooms across all sectors: "Driving innovation: the boardroom gap". The study was developed in partnership with the University of Sydney Business School and drew on data gathered from survey results as well as one on one interviews with directors.

In brief, the study painted a sobering picture of Australian boardrooms struggling to prioritise innovation and lagging their international counterparts. Key points included:

- Australian boards play a key role in fostering, driving, and monitoring innovation – but there remains a significant gap between strategy formulation and strategy implementation.
- Comparatively, directors' responses indicated Australian boards are not prioritising innovation or disruption risks to the extent seen in overseas boardrooms, suggesting Australian boards under-estimate looming strategic risks.
- Directors identified key barriers to innovation as: human talent shortages; limited financial resources; and a focus on short-term financial performance.

Most critically, the study revealed that directors see Australia's regulatory environment as contributing to a risk-averse corporate culture. If we are to drive a corporate culture that takes calculated risks and truly embraces innovation, the regulatory environment must support such a shift in approach.

This is consistent with the AICD's recent Director Sentiment Index – where 34% of directors considered the main reason for a risk-averse decision-making culture was an “excessive focus on compliance over performance” due to complex government regulation.

3. Director perspectives on Government policy and regulatory priorities in the wake of the COVID-19 crisis

More recently, the AICD has been engaging with our diverse membership through the immediate COVID-19 crisis. This has included conducting a recent survey of directors' experiences during the COVID-19 period and their perspectives about the future.

Based on responses from more than 2,300 directors across the listed, large private, small to medium enterprise (**SME**), public/government and not-for-profit (**NFP**) sectors over the last two weeks of May, the results revealed that:

- 68 per cent of directors surveyed say government should radically rethink its agenda, developing new policy priorities and objectives for the Australian economy in a post-COVID-19 world. Only 4 per cent say it should deliver its pre-COVID policy agenda.
- The three areas of governance that directors would most like to see further regulatory reform or relief are: the introduction of pro-growth, pro-innovation policy settings (69 per cent), permanent virtual AGMs (47 per cent) and a pause on all new regulation (42 per cent).
- The high proportion of directors calling for permanent virtual AGMs was not driven solely by the listed sector (59 per cent), but was reflective too of the strong appetite amongst the NFP sector (51 per cent).

It is clear that to accelerate the move to a sustainable economic recovery, Australia needs to set out on a bold period of economic reform and regulatory re-set. A technology-neutral regulatory framework would also further the government's red-tape reduction, digital economy and innovation agendas.

Next steps

We hope our submission will be of assistance to the Committee's deliberations. If you would like to discuss any aspect of this submission further, please contact Christian Gergis, Head of Policy, at cgergis@aicd.com.au, Sophie Stern, Senior Policy Adviser at sstern@aicd.com.au or Laura Bacon, Policy Adviser at lbacon@aicd.com.au.

Yours sincerely



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