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Dear Nick

## **Bringing shareholder communications into the 21st century**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility to develop and implement governance frameworks in public listed, unlisted and private companies, as well as in the not-for-profit and public sectors. They have responsibility for working with the board to prepare the notice of meeting for general meetings (including annual general meetings — AGMs) and other materials that need to be sent to shareholders and for ensuring that distribution of these materials complies with the Corporations Act obligations.

The Australasian Investor Relations Association (AIRA) was established in 2001 to advance the awareness of and best practice in investor relations in Australia and New Zealand and thereby improve the relationship between listed entities and the investment community. The Association's 160 corporate members now represent over A\$1.2 trillion of market capitalisation, over 80% of the total market capitalisation of companies listed on ASX.

Governance Institute and the AIRA have long advocated for measures which facilitate electronic or digital disclosure of information to shareholders and reduce the burden on companies in the form of cost and paper waste that occurs when sending hard copy shareholder communications by mail.

## **Digital shareholder communications – bringing the Corporations Act into the 21st Century**

The Corporations Act was developed prior to the shift to a digital world. Companies currently incur significant costs of printing and posting notices of meeting to shareholders who have not actively chosen to receive an electronic copy of the notice. If Australia's corporate markets are to be fit for purpose in the 21st century, the legislation governing corporations and the management of corporations needs to embrace technology. The current requirements for distributing company meeting notices are technology-specific and have the effect of restricting digital services. They do not reflect the changes in the way Australians engage with digital communications technologies and content.

It is important that Australia's corporate regulatory regime remains competitive internationally, up-to-date and streamlined, to minimise compliance costs and facilitate shareholder engagement. We are of the view that companies and their shareholders will embrace the proposal to move to technology-neutral delivery of meeting materials as sensible, common sense and long overdue.

## Streamlining the Corporations Act to improve shareholder communications

**We recommend** that sections 249J (3) and (3A) of the Corporations Act be amended to enable a company to distribute meeting notices and materials to its members:

- using a universal or near-universal channel of communication nominated by the shareholder,
- while allowing a shareholder to opt in to receive them in hard copy.

A company would be required to ensure the meeting materials are:

- available in the public domain
- accessible
- using a universal or near-universal channel of communication.

**We recommend** that the legislation would deem those shareholders who, neither provide a preferred method of communication (for example, email address), nor opt to receive hard copy meeting materials to have received the materials, subject to the company making the meeting materials:

- available in the public domain
- accessible
- using a universal or near-universal channel of communication, and
- issuing an ASX announcement (if listed).

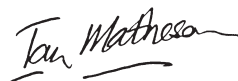
The explanatory memorandum could clarify that making the meeting materials available on the company's website meets the current definition of a near-universal channel of communication.

Our detailed comments follow.

Yours sincerely



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# Bringing shareholder communications into the 21st century

## Background

Currently, all companies must give notice of forthcoming meetings to shareholders in person or by sending notice by post, unless:

- an individual shareholder elects to receive notice electronically, or
- the company has amended its constitution to stipulate an alternative method of notice (section 249 J Corporations Act).

At the same time a company sends out the notice of meeting, it is ordinary practice for the company to also send out material on issues to be raised at the meeting as well as proxy appointment forms for directing the proxy on how to vote on particular resolutions. Companies normally provide reply paid envelopes (although they are not statutorily obligated to do so) to encourage shareholder response.

The requirements of section 249J hark back to a paper-based era, are technology-specific and have the effect of restricting digital services. The 'opt in' approach results in companies incurring the significant economic and environmental costs of printing and posting notices to shareholders who have not actively chosen to receive an electronic copy of the notice.

As part of its response to the Financial System Inquiry, the coalition Government committed to improving financial regulation by making it technology neutral. The Government identified facilitating company meetings as an area where improvement could be made to reduce the compliance burden on business and improve outcomes for shareholders. It recognised that the law did not reflect the changes in the way Australians engage with digital communications technologies and content.

Treasury issued a proposal paper *Technology neutrality in distributing company meeting notices and materials* in May 2016 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.

Some of the key points that all parties to the consultation agreed were:

- shareholder participation in general meetings plays a key role in promoting good corporate governance
- the practical opportunities for shareholders, particularly at the retail level, to play this role are restricted when relevant information is not communicated in a form that is useable and timely
- a technology neutral mode of distributing meeting notices and materials would facilitate innovation and reduce costs for companies while maintaining appropriate levels of shareholder engagement
- the intention of the reform is to ensure that data is provided in a more usable form in a timelier manner through lower cost communication channels and presented in a flexible manner that meets user preferences.

Unfortunately, the reform proposals did not proceed.

The need for reform in this area has only increased since Treasury's initial consultation in 2016. This is due to the continuing high levels of adoption of technology in this country, the high level of Australians owning shares both direct and indirect through their superannuation holdings and the decline in timely postal delivery services. The potential efficiencies for everyone concerned are considerable.

# Supporting shareholder engagement

## 1. Australians are rapidly moving towards digital engagement

Australians are increasingly digital and diversifying the use and mobility of their connected devices.

According to the Australian Communications and Media Authority *Communications report 2017- 18*

- 40% of adults used five or more devices in 2018, up from 23% in 2014.
- The shift to mobile continues. Nearly all Australian adults (96%) had used a mobile phone to make a call in the last 6 months. 83% had a smart phone. The proportion of those who use mobile only for voice (those who have a mobile phone at home and no fixed line phone) increased to just over 41% of Australian adults.
- 87% of adults accessed the internet through their mobile phones in 2018, up by 10 percentage points from 2014.
- Combined 3G and 4G mobile network coverage now reaches 99.4% of Australia's population.
- The volume of data downloaded from mobile networks increased 5 fold from 2014 to 2018.

It is a generally accepted cornerstone of sound corporate governance that shareholder participation is a key component of a successful AGM. Yet companies are experiencing low levels of shareholder engagement at their AGM with shareholder attendance at very low levels. Our large public listed companies frequently have hundreds of thousands of shareholders on the register, which means that shareholder attendance at AGMs can be seen to be drastically reduced when the percentage of shareholders physically attending is reported.

According to Link Group's AGM Snapshot 2018 meetings report, 0.17% of shareholders of Link clients attended AGM's across the country in 2018. Computershare, in its Intelligence report: Insights from Annual General Meetings 2018 reported an attendance level of 0.18% and a 3.97% level of shareholders who voted.

Despite this, the holding of an AGM in the current regulatory climate has significant cost implications for companies — costs have been increasing, and range from \$250,000—\$1,000,000 for ASX200 companies.

### Case study Rio Tinto

The 2019 Rio Tinto Limited AGM was held in Perth and was attended by 110 shareholders and proxyholders – approximately 0.069% of the shareholder base. The cost to hold the AGM was approximately \$330,000.

The Australian Government is keen to provide for interaction with citizens online and we strongly support this initiative. Australians are now very comfortable interacting with not only government agencies but also a range of private and not-for-profit organisations online. Banking, paying bills, making Medicare claims and other financial transactions can be done via a smartphone app or website. Shareholders currently receive news of vital business disclosures by way of the ASX online announcements platform and announcements on company websites.

Australia is the world's sixth largest country (7,682,300 sq km) and shareholders are dispersed geographically. They are frequently dispersed internationally. Shareholders expect to be able to interact with the companies in which they invest utilising current technologies.

For public companies however, the process of engaging with shareholders has barely changed since the invention of the internet. Shareholder engagement has not embraced digital enhancements.

The requirements of the Corporations Act are holding back digital innovation in the way that companies can engage with their shareholders.

We consider that a simplified regulatory framework that accommodates evolving technologies for shareholder communication will facilitate shareholder rights and improve shareholder engagement.

## 2. Importance of timely shareholder communications

In order to be effective, engagement with shareholders needs to be timely.

The requirement to send hard copy notices of meeting and meeting materials to shareholders who have not actively chosen to receive an electronic copy of the notice results in companies having to print and post large numbers of meeting packs.

The printing process can take as long as 7-10 days including transportation to the mail house and Australia Post.

The ability of shareholders to receive timely information is also impacted by the time it takes paper materials sent in the post to reach their addressees. Australia Post ceased daily deliveries for standard mail in 2016 and has moved to two or three per week delivery, charging a premium rate for daily deliveries. According to the Australia Post website, regular mail can take up to 2-6 business days after posting to reach the addressee.

The Corporations Act (replaceable rule) provides that a notice of meeting sent by post is taken to be given three days after it is posted. The deemed receipt period may be shorter under a company's constitution. The extra time it takes Australia Post to deliver mail results in many shareholders having less than the 28 days for listed companies (and 21 days for other companies and registered managed investment schemes) provided for under the Corporations Act to consider the notice of meeting and meeting materials.

A technology neutral mode of distributing meeting notices will allow companies to communicate with their shareholders in a timelier manner and improve on a practical level the way their shareholders can engage with them.

## 3. Broader environmental and sustainability benefits of digital communications

The requirement to print and post notices of meeting to shareholders who have not actively chosen to receive an electronic copy is costly for companies and the environment with most meeting packs being destined for landfill.

Australians are increasingly interested in the broader environmental costs of paper waste. Later in this submission we provide details of the volume of hard copy meeting materials that are sent each year to shareholders.

Enabling companies to use their website as the default for delivering notices to shareholders with an option to opt in to receive hard copy represents an opportunity for shareholders to benefit from the cost efficiencies and broader environmental and sustainability benefits that can be realised through a move away from hard copy printed meeting and other materials.

## 4. The importance of shareholder choice

Reform of the Corporations Act must take into account shareholder choice. We support the right of shareholders to 'opt in' to receive documents in hard copy.

However, companies should not be obligated by legislation to provide hard copy materials to shareholders who neither provide a preferred method of communication (for example, email address) nor to receive hard copy meeting materials. The legislation should deem these shareholders to have received the materials, subject to the company making the meeting materials:

- available in the public domain
- accessible
- utilizing a universal or near-universal channel of communication, and
- issuing an ASX announcement (if listed).

We note that many shareholders are disengaged regardless of efforts on the part of companies to engage them.

# The regulatory burden on companies

## 1. Cost of printing and mailing hard copy notices of meeting

Enabling companies to use their website as the default for delivering notices to shareholders with an option to opt in to receive hard copy would significantly reduce printing and postage costs for companies that are currently required to send notices of meeting to shareholders who have not actively chosen to receive an electronic copy.

According to Link Market Services, currently 52.05% of shareholders across their shareholder base have elected to receive notices of meeting via email.

Information received from Computershare Limited indicates that it administers more than 5.5 million holding account records where there is no email address recorded (being approximately 50% of holdings across all clients).

There remains a large portion of shareholders who have not elected to receive notices of meeting electronically and to whom companies must send a paper notice of meeting by post.

The costs of printing and posting hard copy notices of meeting are substantial.

### Case study Telstra

Telstra has approximately 1.3 million shareholders, and has the largest share register in Australia. It has a large number of retail investors, as well as institutional investors (domestic and offshore). Currently, just over 55.1% of Telstra shareholders receive some or all of their shareholder communications electronically. Telstra has a program for both existing and new shareholders to encourage them to become e-shareholders and receive a variety of shareholder communications electronically, rather than in hard copy (eg. Dividend statements, notice of meeting and other important shareholder communications such as information concerning its investor day briefings). However, in Telstra's experience, a large number of existing shareholders simply do not respond to requests to become an e-shareholder. For example, the number of Telstra shareholders who elected to receive some or all of their shareholder communications electronically over the last 12 months increased by less than 2%.

Telstra communicates with its e-shareholders via digital communication channels in the form of an email notification with links to the documentation on the company or share registry website. However for those shareholders who have not provided an email address, Telstra is required to send them shareholder communications in hard copy form. In 2019 Telstra printed and posted approximately 650,000 hard copy notices of meeting. In general, printing and postage costs for a mail out like this are between \$800,000 and \$1 million.

### Case study Rio Tinto Limited

#### Data on 2019 Rio Tinto Limited Notice of Meeting distribution and associated costs:

As at 28 October 2019 Rio Tinto has 157,714 shareholders with 52.28% of the holders receiving communications electronically.

The print and mailing costs associated with the dispatch of the notice of meeting for the Rio Tinto Limited 2019 AGM was approximately \$155,000. Approximately 59,000 shareholders received a hard copy notice of meeting by post and 77,000 shareholders opted to receive the notice of meeting electronically.

### Case study Company X (this company wishes to remain anonymous)

Company X is a listed investment company with 140,000 shareholders the vast majority of which are retail shareholders.

The costs for printing and postage of the Notice of Meeting is \$214,000 of which \$135,000 is postage. This does not include the printing cost of the glossy annual report or smaller shareholder report which costs \$76,000.

Company X has 5,796 proxies lodged (4.14% of shareholders representing 7.86% of capital), of which 3,386 are returned hard copies.

Approximately 400 shareholders turn up to Company X's AGM, representing 0.28% of its shareholders.

The costs of printing and posting hard copy notices of meeting are increasing.

The current Basic Postage Rate is \$1. On 1 August 2019, Australia Post provided the ACCC with a draft price notification proposing to increase prices of ordinary letters delivered at the regular timetable by 10 per cent.

The proposed January 2020 price increases for Australia Post are:

**Prices of ordinary letter services**

Letter service	Current price	Proposed price	Increase
Small letters (BPR)	1.00	1.10	10.0%
Large letters up to 125 grams	2.00	2.20	10.0%
Large letters >125 grams <250 gams	3.00	3.30	10.0%

These price increases will impact on the costs of delivery of AGM materials for shareholders who have not provided an electronic address. It will cost companies (and their shareholders) even more than it does at present to issue shareholder communications by post.

In addition, our members report that their companies' efforts to collect the email address details of their shareholders are 'hitting the wall' with ever diminishing rates of success each time a campaign is undertaken.

**Case study Woodside Limited**

Woodside conducted an eCommunications campaign for four weeks during August/September 2019 to encourage shareholders to receive all shareholder communications (including annual reports, notices of meeting, dividend statements and other company related information) from Woodside electronically.

As part of this campaign, Woodside offered shareholders the opportunity to win a \$5,000 travel gift card. Only Australian registered shareholders were eligible to participate in the competition due to regulatory restrictions, as lottery licences/permits had to be obtained in NSW and ACT. Overseas shareholders email addresses were however also captured via a Go Online Form included in the dividend mail communications.

Woodside's rationale for the campaign was that electronic communications have a beneficial environmental impact, are more effective and ensure shareholders receive communications faster. Electronic communications are also more cost efficient (each postal mailout costs over \$200,000). For this eCommunications campaign, Woodside leveraged a one-off Dividend Reinvestment Plan (DRP) communication that was required to be sent to shareholders due to the DRP being reactivated.

A dedicated elections website was also created for shareholders to update their DRP elections and to encourage shareholders to sign up for fully electronic communication.

The target group for the campaign was 206,699 existing shareholders who have not provided full eComms. As a result of the eCommunications campaign, full eComms elections were received for an additional 3,525 shareholders (1.7% of target audience).

Only 3,691 Woodside shareholders have opted in to receive hard copy annual reports (1.68% of the total shareholder base).

Woodside is required to send hard copy notices of meeting/proxy forms to 107,625 Woodside shareholders who have not elected to receive these documents by email.

### Case study AMP Limited

AMP has the third largest shareholder base in Australia with over 730,000 shareholders. AMP regularly encourages its shareholders to provide their email addresses to facilitate more efficient communication and allow them to keep up to date and engaged with their AMP shares.

Notwithstanding these efforts, AMP holds email address details for only 40% of its shareholders (approximately 290,000 email addresses). AMP incurs significant costs for printing and mailing AGM materials. In 2019 AMP was required to mail the AGM materials to 470,000 shareholders, of which only around 26,000 responded by proxy. The cost of printing and mailing was approximately \$700,000. These costs will increase as a result of Australia Post's foreshadowed price rises.

Each year, between 2,000 and 5,000 hard copy letters to shareholders containing meeting materials are returned to the company as undelivered mail.



This is a photo of the AMP shareholder mail out for its May 2019 AGM. The pallets contain the hard copy notices of meeting and meeting materials for shareholders for whom AMP does not have an email address. Three Australia Post trucks were required to collect and process the meeting materials. AMP also mails 90,000 packs for overseas shareholders located in 129 countries. Sixteen tonnes of paper (not including envelopes) were used to print the notices of meeting.



While the case studies provided in this submission are from large listed companies, the cost burdens on smaller listed companies are relatively the same. Cost savings gained by reform of the Corporations Act will flow through to smaller companies as well as larger ones.

## 2. Sustainability issues for companies

Listed public companies are under increased scrutiny from investors, regulators and the broader community to provide greater transparency on environmental and social risks. They are also encouraged to publish sustainability reports to support disclosures on environmental and social risks in accordance with the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations 4th edition*.

Companies that plan to reduce their paper waste in line with their sustainability goals are limited by the current Corporations Act provisions.

### Reform of the Corporations Act

We recommend a streamlined approach to the reform of the delivery of meeting notices and materials. Importantly, given the speed of technological change, it is important that any amendments to the Corporations Act be technology-neutral. That is, they need to provide for the use of technology without specifying any particular technology. This allows for innovation in shareholder communication and engagement (and corporate reporting), as technology evolves. This recommendation is predicated on the government recognising in the explanatory memorandum of the amending legislation that email and website communication currently meet the definition of near-universal channels of communication, even though this may change over time.

We recommend that sections 249 J (3) and (3A) of the Corporations Act be amended to enable a company to distribute meeting notices and materials to its members:

- using a universal or near-universal channel of communication nominated by the member,
- while allowing a shareholder to opt in to receive them in hard copy.

A company would be required to ensure the meeting materials are:

- available in the public domain
- accessible
- utilising a universal or near-universal channel of communication.

We recommend that companies should not be obliged by legislation to provide hard copy materials to shareholders who neither provide a preferred method of communication (for example, email address) nor opt to receive hard copy meeting materials. We recommend that the legislation would deem these shareholders to have received the materials, subject to the company making the meeting materials:

- available in the public domain
- accessible
- utilising a universal or near-universal channel of communication, and
- issuing an ASX announcement (if listed).

The explanatory memorandum could clarify that making the meeting materials available on the company's website meets the current definition of a near-universal channel of communication.

This amendment would most usefully be in place by 1 July 2020 for annual general meetings which take place after this date.

Shareholders already receive annual reports electronically — there was more than 90 per cent take-up by shareholders when this reform was introduced in 2007. Under section 314 (1AB) of the Corporations Act, a shareholder who does not elect to receive a copy of the Annual Report may access the report on a specified website. Given that the majority of shareholders no longer receive the annual report in hard copy, printing and mailing costs for companies (and their shareholders) can be reduced for the delivery of meeting materials if technology-neutral delivery becomes the default setting in legislation. In the 12 years since the introduction of that reform, the increase in online broking means that shareholders are more likely to use online broker or registry portals to manage their shares. The move to offering choice on receipt of the notice of meeting complements this choice.

The reform of the law will involve communication to shareholders, which provides the opportunity to seek email addresses from shareholders. This will automatically lift the percentage held by companies, as the change of law introduces a compulsion for shareholders to provide an email address which is currently lacking.

As support for this contention, we note that many public listed companies communicated to their shareholders that bank account details were required for the payment of dividends, and that they would no longer be issuing cheques (which had been the standard form of payment method). These companies note that 95 per cent of shareholders complied readily, showing market acceptance of online interaction.

The company should be obliged to notify the shareholder of the change in law and seek the shareholder's preferred method of communication once only.

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.

We note that many shareholders are disengaged regardless of efforts on the part of companies to engage them. Many companies see voting forms returned each year, as shareholders do not advise the company of a change of address. Not all shareholders will engage — this should remain a shareholder choice.

The notification could be supported by companies voluntarily:

- issuing ASX announcements (if listed)
- issuing media releases
- taking out advertisements in national daily newspapers
- utilising social media to advise of the change of law.

We do not recommend that the use of media releases, advertisements in national daily newspapers or social media be mandated, but left to the discretion of each company.

Companies currently send out shareholder packs to new shareholders, requesting their preferred communication method. This would continue. The shareholder pack could also explain that shareholders will be deemed to be notified of an AGM and to have received meeting materials should they not nominate a preferred method of communication, as the material will be available on the company's website.

## **Streamlining other shareholder communications**

There are significant inconsistencies in how legislation deals with the delivery of certain meeting materials from companies and trusts. For example, a company sending out documentation in relation to a scheme of arrangement can send shareholders who have requested delivery of documents by email, with a URL providing a link to the documents, whereas trusts have a statutory obligation to send the entire document by electronic means, which can present real challenges when the files are too big to be received. This has led to hard copy delivery being the default delivery mechanism.

We would like to see greater consistency introduced in relation to delivery methods specified in legislation across types of entities. We would also like to see the legislation 'future proofed' in relation to the delivery of materials relating to corporate actions, which would require technology-neutral provisions to be introduced.

We recommend that the issue of expanding this proposal to other documents should be subject to further consultation, as legislative amendment in this area presents particular challenges that will need more detailed consideration.

### Requirement to issue notices of meeting for six years for a 'lost' address

Currently, companies are required to send a notice of meeting to a shareholder for 6 years when their address is noted as 'lost' or incorrect. For large registries this can add significant cost in printing and posting up to 20,000 plus documents to addresses which are known to be incorrect. From a brand perspective, current residents automatically assume incompetence by the company as they have previously alerted the sender that the recipient no longer resides at the registered address. Below is a typical returned mail document from these mailings. This example is one of the more polite versions returned.

We recommend changing this rule so that companies are required to send one notice to a wrong address, with the aim of contacting the shareholder in the case of mis-directed mail.



## Conclusion

The current requirements for distributing company meeting notices and meeting materials do not reflect the changes in the way Australians engage with digital communications technologies and content. They also impose significant regulatory burden on companies.

Reform of the Corporations Act as recommended by both AIIRA and Governance Institute will facilitate digital disclosure to shareholders and reduce the burden on companies. The Corporations Act was developed prior to the shift to a digital world. Reform is needed to bring shareholder communications into the 21st century.