

21 August 2020

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Dear Rachel and Claire

### **Issues arising from COVID-19**

We refer to your email asking for information about other issues or concerns our members are experiencing in light of the stage four restrictions in Victoria.

Our members have raised a variety of issues arising from the Victorian lock down and the impact of COVID-19 in general.

Our members are experiencing problems:

1. lodging documents with the ASIC registry within required timeframes due to delays with Australia Post
2. complying with s 601 HE (3) of the Corporations Act that requires lodgement of amended compliance plans signed by all directors of the company
3. planning an AGM in circumstances where the chair/company secretary/CEO may not be able to travel to the location where the meeting will be filmed.

COVID – 19 has exposed many of the shortcomings of the current legislative environment, particularly the out-dated, paper-based state of the Corporations Act, as well as the need for the Government to bring it into the 21st century. The matters raised by our members require both short term consideration and a long term solution.

While we appreciate that the third item above is a state based issue, we consider it is important for ASIC to be aware of its possible impact on the AGM season so you can bring it to the attention of the relevant Government departments.

Details of the problems our members are facing are contained in the attachment to this letter.

If you have any questions concerning our submission please do not hesitate to contact our policy advisor, Michelle Huckel.

Kind regards



Catherine Maxwell  
General Manager, Policy and Advocacy

### **1. Impact of Australia Post delays**

Current delays in the delivery of post is impacting on companies' ability to comply with Corporations Act notice and lodgement requirements.

These sections of the Act were introduced when mail routinely arrived within 3 days of posting. Australia Post has introduced a new delivery schedule in response to the dramatic increase in parcel post during the COVID-19 pandemic. Letters in metropolitan areas are only delivered every second day and the public has been told to allow five days for intrastate posting. A standard letter service now takes an extra 1-2 business days in most cases to reach its addressee. Our Western Australian members advise that it takes 10 days for an express post delivery from Perth to ASIC's post office box.

The assumptions upon which the Corporations Act notice and lodgement requirements are based should be reviewed and an electronic alternative made available. Section 601 HE (3) of the Corporations Act discussed below, is an example of a lodgement requirement that needs immediate change.

### **2. Section 601HE(3) of the Corporations Act – adoption of new or amended compliance plans – requirement of signatures of every director**

Managed investment schemes (MISs) of A-REITs and AFSL entities are required to have an ASIC-registered compliance plan. Some companies have several MISs, each with their own compliance plan. Compliance plans are required to be reviewed annually and may be amended (by a board resolution) as a result of that review or where new legislation necessitates an amendment.

Every new or amended compliance plan must be lodged with ASIC within 14 days of the board's approval resolution. To be accepted and registered by ASIC, it must be signed by every director and the 'wet ink' version sent to ASIC in Victoria by post.

#### **The process before Covid-19**

Prior to COVID-19 our members advise that the only way they could ensure compliance with the requirements of section 601 HE (3) of the Corporations Act was:

- if all directors attended the board meeting in person (this assumes no apologies)
- the resolution was passed without change
- all directors signed the cover page before leaving the meeting
- the company secretary posted the new compliance plan to ASIC immediately by express post making sure to use the postal tracking service.

As a result, it was challenging for companies to comply with the 14 day time period, particularly if they had to send documents interstate.

#### **Impact of Covid-19**

COVID-19 has resulted in section 601 HE (3) becoming unworkable. The section requires amendment immediately and any change must be permanent to ensure companies can comply with the provision.

We have received feedback from one member whose company is delaying the amendment of a compliance plan as they cannot meet the 14 day lodgement deadline while their board meetings are being held online, some directors are in a Victorian lock-down and the postal service suffers from delays.

By way of example, a company with nine directors would need to undertake the following steps to comply with the provision:

- All nine directors attend the Board meeting by videoconference and pass the resolution to amend the plan.
- The company secretary prints out the signing page (which must show the date the resolution was passed and allow nine space for signatures).
- The company secretary posts the signing page to the first of the nine directors and asks them to sign the cover and pass it on by post to the next director on the list. This may not be possible where directors are in stage 4 lockdown in Victoria or are subject to quarantine.
- This will take longer if there are overseas directors.

Until the amended plan is received by ASIC with original signatures from all directors, it cannot be registered and does not take effect. The company must operate under the superseded plan until the amended plan is registered. This may result in a company operating a scheme in a non-compliant manner if the reason for the amendment was for compliance purposes.

It cannot be assumed that post COVID-19, companies will revert to holding physical board meetings. Feedback from our members is that post COVID-19, companies are more likely to hold virtual meetings. The assumption upon which compliance with section 601 HE (3) is based will no longer apply.

We also question why an administrative document such as a compliance plan requires signature by every member of the board.

Section 601 HE (3) is unworkable in any circumstance.

**We recommend that:**

- the Corporations Act be amended to enable the company secretary to sign the cover sheet attesting to the fact that it has been approved by the board on a particular date.
- The lodgement deadline be extended to one month to allow for Covid-19 movement restrictions and postal delays.
- ASIC accept lodgement of the document online or by email.

### **3. Holding an AGM during stage 4 lockdown – impact on those required to facilitate the meeting**

We anticipate that most companies planning to hold an AGM while restrictions are in place will rely on the Treasurer's Determination and hold their AGM online. Our members have brought to our attention the issues that will arise if chairs/CEO's/company secretaries/support staff are unable to travel to a production studio or registered office for AGM rehearsals and the event itself due to stage 4 restrictions.

By way of example, one of our members is the company secretary of a Western Australian based listed public company with a Melbourne based chair. Given the current border closure and travel restrictions in place for Western Australia, the chair is unable to travel to that state to attend the location where the company's AGM will be filmed. The company's contingency plan is for the chair to travel to the production studio in Melbourne in order for them to rehearse for and chair the virtual AGM. The company is concerned that if a stay at home order is still in place when the AGM is conducted, the chair will not be able to travel to the studio. In this case, the meeting will need to be chaired in the chair's living room or home office. While the production studio has confirmed that they have a permit to work and travel to work (as a TV broadcast and corporate broadcast streaming service) and could set up all the equipment at the chair's home, this is clearly not an ideal situation for a large publicly listed company. It would be preferable from a technical standpoint for the chair to conduct the meeting from a studio.

Similar issues arise for Victorian based companies holding their AGM during a stage 4 lockdown. If the chair/CEO/company secretary are unable to attend either the registered office or the studio, the meeting will need to be filmed from their homes.

Our members have asked that if a stay at home order is in place at the time of the AGM, a 'Stay at Home' exemption could be granted to those required to attend the production studio or registered office to enable them to facilitate the AGM.