

17 June 2016

Manager  
Corporations and Schemes Unit  
Financial System Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

*via email to corporations.amendments@treasury.gov.au*

Dear Sir/Madam

## **Technology neutrality in distributing company meeting notices and materials**

The Australian Institute of Company Directors (**AICD**) is pleased to provide a submission on the Australian Government's proposal for technology neutrality in the distribution of company meeting notices and materials.

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director education, director development and advocacy. Our membership of more than 38,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The participation of shareholders, as the collective owners of a company, in general meetings is a crucial component of good governance. Relevantly, 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. Accordingly, we support the government's proposal for technology neutrality in the distribution requirements for company meeting notices and materials, subject to the comments below.

### **1. Summary**

In summary, the AICD submits that:

- the *Corporations Act 2001* (Cth) should be amended so that the distribution requirements for meeting notices and materials are technology neutral, as this would facilitate efficiencies for companies to the benefit of their shareholders;
- to ensure that such reforms would not undermine shareholder participation in company meetings, notices should only be given individually to shareholders unless they expressly opt in to rely solely on general public notices;

- to enhance the exercise of voting rights by shareholders, the proposals in the consultation paper would need to go much further to include voting-specific measures such as the introduction of direct voting and electronic voting rights; and
- the principles of technology neutrality should be extended more broadly to the distribution of other company documents to shareholders.

## 2. Technology-neutral approach to distribution

### *Default for distributing meeting notices*

The AICD endorses the government’s objective of technology neutrality in the distribution of company meeting documents.

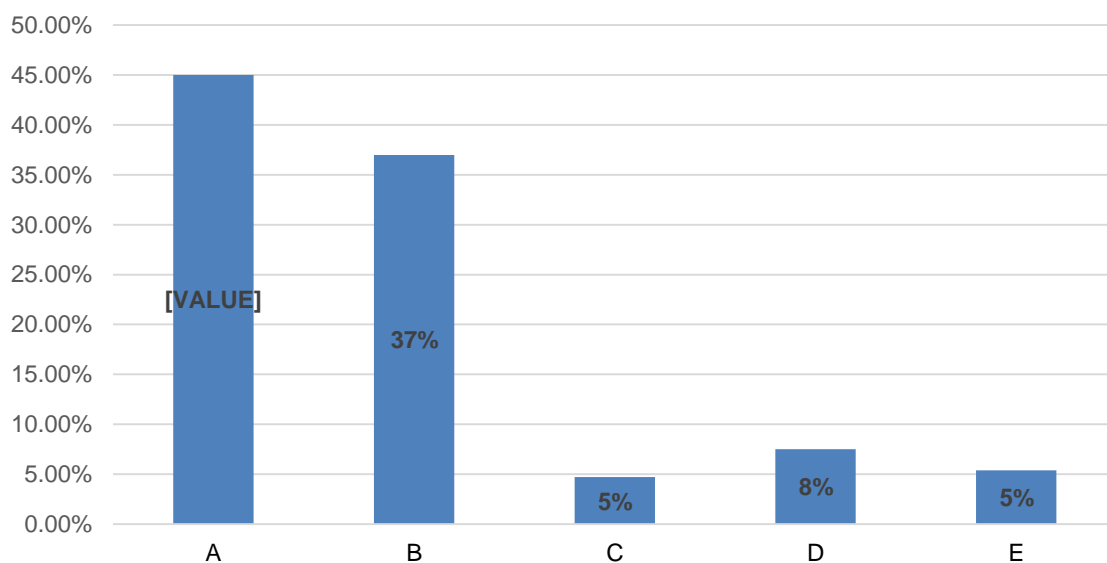
As recognised by the proposals paper, the current legislative distribution requirement ‘hark[s] back to a paper-based era, is technology-specific and has the effect of restricting digital services’. Digital technology has been the dominant medium of communication for some time now, as highlighted by the Australian Communications and Media Authority’s *Communications Report 2014-15*, which demonstrated that Australia is ranked highly globally in terms of the use of digital communications technology, especially mobile devices.

In this context, it is appropriate to move beyond paper-based systems as the default. This conclusion is supported by a recent survey conducted by the AICD. As outlined in **Table One** below, members surveyed by the AICD overwhelmingly supported a dominant role for technology in the distribution of annual general meeting materials. Specifically, the respondents indicated a preference that listed companies:

- provide notices and materials by email, unless members request otherwise (**45 per cent**); or
- post notices and materials on the company website, notifying members of their availability electronically, unless members request otherwise (**37 per cent**).

Support for a default of hard copy distribution was very low (**8 per cent**).

**TABLE ONE:** *In relation to the distribution of AGM notices and materials for listed companies, which of the following do you agree with most?*



**COLUMN KEY AVAILABLE ON PAGE 3**

- A *Companies should send them electronically to members by email attachment, unless members request otherwise*
- B *Companies should post them on the company website, notifying members electronically unless members request otherwise*
- C *Companies should post them on the company website, notifying members through an electronic public announcement (e.g., via the ASX), unless members request otherwise*
- D *Companies should distribute them in hard copy, unless members specifically opt in to electronic delivery*
- E *Companies should be permitted to choose the form of delivery without having to give members the option to nominate a different form of delivery.*

**NB:** For the purposes of this question, 'electronically' includes by email or SMS.

However, the AICD questions the statement made in the proposal that email would not be recognised as a 'universally accepted or near-universally accepted channel' on the basis that only 86 per cent of the population have a home internet connection. The AICD notes that many Australians use methods other than a home internet connection to send and receive emails such as handheld devices or internet connections available at their place of work.

#### *Individual or public notice*

To ensure that a technology-neutral approach to distribution does not disenfranchise shareholders, the need for efficient distribution must be balanced against the method's effectiveness at bringing the information to the attention of shareholders. The AICD considers that individual notice to shareholders best achieves this balance. We do not support enabling companies to default to general public notices, although this method could appropriately be offered to shareholders on an 'opt in' basis.

Relevantly, among members surveyed by the AICD, only **5 per cent** of respondents felt it was an acceptable default for a company to post meeting notices and papers on the company website with members notified via a public announcement (see **Table One** above).

Furthermore, to permit public notifications without first obtaining the shareholder's consent or contemporaneously sending the shareholder some form of individual notice (for example, a notice identifying the web address where the materials are located) would go significantly beyond the regulatory regimes of the other jurisdictions outlined in the proposals paper.

#### *Regulations and ASIC guidance*

The AICD supports the proposal for ASIC guidance on the concepts that form part of any reforms flowing on from this consultation. The proposed 'back pocket' regulation-making power is also merited.

We appreciate that as technology evolves it may be necessary for the law's application to be clarified. Guidance and regulations would further enhance the scope for the reforms to adapt to changes in business and communication practices to remain relevant over time.

#### *Transitional arrangements*

The AICD agrees that a company should be required to notify shareholders individually of the distribution method(s) it wishes to adopt, using its existing method of communication for each shareholder in the initial notification. The notice should also clearly explain any 'opt in' or 'opt out' options available to the shareholder.

Recognising that knowledge of a company’s method(s) of distributing materials is also important for prospective shareholders, the AICD recommends that the government consider requiring companies to specify their shareholder communication method(s) on their website, again with an explanation of any ‘opt in’ or ‘opt out’ mechanisms.

### 3. Impact of changes on the exercise of voting rights

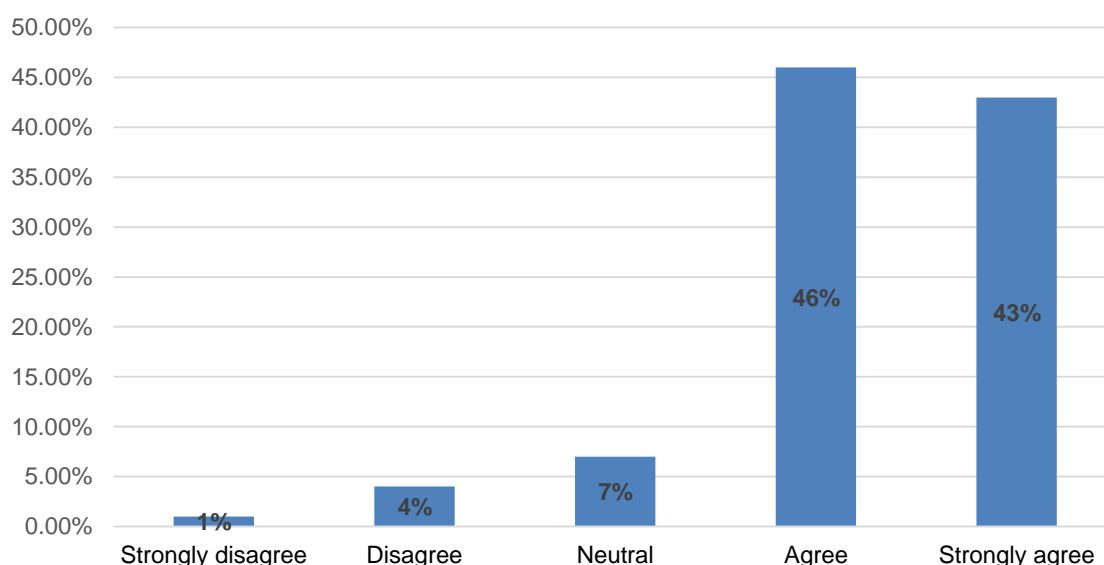
The AICD agrees that the introduction of a new default technology-based method of distribution may negatively impact the engagement of some retail shareholders who do not have access to, or do not access frequently, the nominated service. This risk may be minimised by providing the initial notification contemplated in the proposals paper. That notification should clearly explain any ‘opt out’ options available to the shareholder.

In our view, this notification should be given individually by the method of distribution currently used for the shareholder. While we appreciate that giving notice individually will impose costs on companies that currently distribute hard copy materials, we believe this approach optimally balances corporate efficiencies with shareholder rights and engagement.

In addition to taking reasonable steps to minimise the risk of shareholder disengagement, it is the strong view of the AICD that measures should be introduced to enhance shareholder engagement through voting. It is well documented that shareholder attendance at the annual general meetings of listed companies has been declining for many years. The AICD believes that voting could be facilitated by measures such as direct voting and the increased use of electronic voting.

Relevantly, a recent AICD survey indicates there is strong support for direct voting by listed companies. As shown in **Table Two** below, **88 per cent** of respondents agreed that listed companies should be required to offer direct voting at AGMs. Disagreement with this sentiment was very low, at **5 per cent**. Further, offering direct voting by electronic means would, in our opinion, provide an even greater opportunity for shareholder engagement and participation.

**TABLE TWO:** *Listed companies should be required to offer direct voting for AGMs, so that members not attending can vote without a proxy*



#### **4. Broader application of technology neutrality**

While the introduction of technology-neutral distribution requirements for meeting documents would be a positive development, the AICD believes that the government's proposal should go further. In our view, a technology-neutral approach to the delivery of any company document to shareholders should be the default position under the *Corporations Act*. That said, delivery should still occur on an individual basis, unless the shareholder has expressly consented to a public method of communication.

A broader application of technology neutrality than that contemplated by the proposals paper is, in our opinion, needed to reflect the technology-rich operational environment in which today's companies and shareholders operate. This change would allow the *Corporations Act* and company practices to adapt to new technologies as they develop. Importantly, a technology-neutral regulatory framework for companies would also further the government's red-tape reduction, digital economy and innovation agendas.

We hope our comments will be of assistance to you. Should you wish to discuss any aspect of this submission, please contact our NFP Policy Adviser, Lucas Ryan via [lryan@aicd.com.au](mailto:lryan@aicd.com.au) or (02) 8248 6671.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Louise Petschler', with a long horizontal flourish extending to the right.

**LOUISE PETSCHLER**  
General Manager, Advocacy