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## **Proposed legislation to permanently end mandatory physical AGMs**

Dear Treasurer Frydenberg (via Treasury's Manager of the Market Conduct Division),

One of the last times we caught up was at a Nexus Energy shareholder meeting held at Crown Melbourne before you entered Parliament. I was asking questions as a shareholder and you were attending as a Deutsche Bank investment banker looking after the interests of a client. If this had been a zoom meeting, we wouldn't have had the conversation we did after the meeting.

I'm Australia's best known retail shareholder activist and have asked questions at around 450 physical AGMs of ASX listed companies since 1998 with only the last few since the pandemic hit using an online only format.

Whilst there are some advantages with the online written questions format (the questions are shorter and therefore you get through far more of them in an hour of debate than what would occur at a physical AGM, plus there can be a greater number of shareholders asking questions), I still very much prefer asking questions at physical AGMs for the following reasons:

- # it is far easier to sustain a line of questioning and follow up on issues, compared with the sterile one question at a time online format.
- # Companies (Reece was an example only this week) can censor or edit down your written questions to make them less pointed or potent. This can't happen at a physical AGM when you have the microphone.
- # Directors can get away with far less at a physical AGM, both in terms of avoiding questions and turning up. It is important to see the whites of their eyes as the blowtorch is being applied if shareholders have suffered significant losses or there have been major scandals.
- # Some of the most interesting discussions with executives and directors usually occur before and after the formalities of the actual AGM and this access is lost with an online AGM.
- # Retail shareholders are shunned every other day of the year, whilst institutions, analysts and media get twice yearly earnings conference calls. The physical AGM tends to be an exclusive access event for retail investors and there are 7 million of these in Australia who deserve to be treated with more respect than what is being shown with this needlessly rushed consultation process in the middle of the current AGM season.
- # In terms of "sending a message" the physical AGM is far better because you normally have more executives and directors in attendance, along with the press, who can talk directly to the shareholders after the meeting, reporting in detail on what they've said and their broader views on the company. Company personnel attending are also far more likely to take on board the feedback and criticisms from shareholders if they are in the room together observing what was said and discussing it afterwards, rather than just watching on their own remotely.

## **Other potential more useful reforms**

If you really need to tinker with the current AGM system on a permanent basis, please consider instead introducing the following reforms:

# Make it compulsory for listed companies to run hybrid AGMs where shareholders can both attend physically or virtually, including the ability to ask written and oral questions from home, whilst also voting online. This would address the issue of some companies, such as Harvey Norman, which refuse to webcast their AGM thereby confining access to just a small number of shareholders who turn up in Sydney each year.

# Where a company is running an online only AGM, ensure that shareholders can ask unscripted oral questions, rather than just the more limited form of written questions before or during the meeting, something which the majority of companies have done in 2020. Unscripted oral questions are no different to what analysts are offered on the twice yearly earnings conference call. You wouldn't have a third party reading out Opposition questions in Parliamentary Question Time so please don't design such a system for online AGMs where you have the company secretary reading out written questions lodged by shareholders.

# Require companies to lodge a full transcript of their online, physical or hybrid AGM with the ASX and on their website so there is a full and accessible record of what was said. This is no different to requiring a Parliamentary Hansard or transcripts of court proceedings. You wouldn't ask lawyers and politicians to scroll back through video archives of Parliament or court cases, so get with the program and mandate transcripts of AGM debates. Harvey Norman is still refusing to provide shareholders access to the video recording they took of last year's AGM or a transcript of the contentious debate.

# Make it easier for institutional shareholders to vote directly or by proxy at the actual meeting, to reduce the so-called Davis Cup dead rubber effect, where retail shareholders are voting knowing that institutions have already decided the outcome. This could be achieved by moving the record date for voting from 48 hours before the meeting to 5 working days before the meeting, thereby creating more time to sort out proxy appointments to facilitate live institutional AGM voting. This would make directors earn their majorities in the way they address shareholders at the meeting before the final poll is conducted, because an arrogant or dismissive answer to a question could be punished with a changed late vote at the meeting.

In summary, this appears to be a strange piece of legislation to prioritise at a time when Prime Minister Scott Morrison says the government has been too busy to set up a Federal Integrity Commission since the exposure draft of the legislation was provided to the Attorney General's department in December 2019.

And all the while, over the balance of 2020, the government has been going hammer and tongs changing laws which affect business accountability under the cover of COVID-19. Insolvent trading laws were relaxed, it became easier to dilute retail shareholders in capital raisings, class actions were banned and now the government is embarking on a rushed consultation process to allow companies to ditch the physical AGM, moving wholly online.

It is outrageous that stakeholders have been [given just 11 days](#) up until October 30 to make a submission on the [draft legislation](#) which proposes to make permanent the earlier temporary

relief from holding physical AGMs which was introduced in May 2020 and lasts until March 2021.

This is a bad move. The physical AGM is the one day of the year where shareholders get to eyeball directors and the backlash has been considerable with the following groups already on the record opposing the move:

ISS, the world's biggest proxy advisory firm.

Ownership Matters, the only Australian-owned institutional proxy advisory firm.

The Australian Council of Superannuation Investors.

The Australian Shareholders' Association, the peak body for retail investors.

Peter Morgan, the former head of Perpetual Investments, and one of the few Australian fund managers who ever bothered to turn up and ask questions at physical AGMs.

So, who has been lobbying the government for this change? Presumably it is the Australian Institute of Company Directors and law firms such as King Wood Maleson which advises many of Australia's major listed companies, who in turn are governed by directors who clearly dislike uncomfortable accountability moments at physical AGMs.

Sure, by all means have a virtual component to the meeting, as many companies already do, but if you don't bring the shareholders, directors and executives into the one room you will lose the accountability that comes from sustained questioning.

The recent Crown Resorts AGM in October was a good example of what can happen if you go fully virtual whilst also removing the ability for shareholders to speak at AGMs.

*The Australian's* Damon Kitney [summed up the Crown AGM atmospherics](#) as follows:

*The first virtual annual meeting in the company's history, supposed to be the most anticipated ever after the devastating findings of the Bergin inquiry, turned into an affair completely devoid of emotion.*

*Unlike their worst moments in the Patricia Bergin's witness box over the past four weeks, Crown's directors — led by chair Helen Coonan — were completely back in control.*

*The voice of shareholder activist Stephen Mayne was nowhere to be heard. Instead his usual series of questions were submitted in writing and read to Coonan by company secretary Mary Manos.*

A small number of companies such as Rio Tinto and Macquarie Group have set up tele-conference meetings to allow shareholders to ask unscripted oral questions during their AGMs, but the vast majority are limiting questions to those submitted in writing either before or during the meeting, which is highly restrictive.

For instance, The Commonwealth Bank [deliberately ignored](#) a range of questions submitted by some of its critics, curtailing what is normally a 4 hour-plus meeting to only 2 hours this year.

If Big Four banks are already abusing the power imbalance which comes from online AGMs, what are all those cowboy small mining companies based in West Perth going to do when it comes to future AGM seasons.

Finally, if this reform is really about costs savings and productivity, then please legislate to allow for fully online annual reports and meeting notification communications. The printing and postage of these documents is where the vast bulk of AGM expense occurs for companies with large registers of retail shareholders.

The actual physical meeting isn't that big an expense (for instance, in the past Computershare has offered their Abbotsford conference centre for free to the likes of JB Hi Fi and Reece) and most companies combine their AGM with a regular board meeting anyway.

In conclusion, please don't rush this legislation through before Christmas. Delay it for at least 6 months so we can all examine the experience of online AGMs during this unique pandemic and then let's make some broader considered changes to the legislation around AGMs, rather than just focusing on a single retrograde step, being the needless abolition of the compulsory physical AGM.

Yours Sincerely

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