Business Council of Australia

Submission to the Corporations and Markets Advisory Committee AGM and Shareholder Engagement Discussion Paper

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About the BCA

The Business Council of Australia (BCA) brings together the chief executives of 100 of Australia's leading companies.

For almost 30 years, the BCA has provided a unique forum for some of Australia's most experienced corporate leaders to contribute to public policy reform that affects business and the community as a whole.

Our vision is for Australia to be the best place in the world in which to live, learn, work and do business.

Introduction

This submission responds to the Corporations and Markets Advisory Committee (CAMAC) discussion paper released in September 2012 regarding the AGM and shareholder engagement.

The Business Council of Australia supports effective shareholder engagement and participates in a range of initiatives and forums that promote good corporate governance and shareholder engagement such as the ASX Corporate Governance Council. We have also previously developed publications promoting best practice including *Fresh Approaches to Communication Between Companies and Their Shareholders* (2004) in conjunction with the Australian Institute of Company Directors (AICD) and Chartered Secretaries Australia (CSA) and *General Meetings – Code of Conduct*.

Our submission is organised in three parts:

1. a summary of our general views on the regulatory approach that should be adopted in relation to shareholder engagement and AGMs
2. a summary of our main positions in relation to the questions outlined in the discussion paper
3. a detailed response to the questions outlined in the discussion paper.

Regulatory approach to shareholder engagement and AGMs

We note that the starting point for many of the discussion questions in the discussion paper is the possible need for legislative intervention in a range of areas involving shareholder engagement, annual reporting and the AGM. The paper also outlines legislative initiatives being undertaken in overseas jurisdictions.

The BCA is of the view that CAMAC should be cognisant of a number of factors in the corporate regulatory environment before recommending legislative approaches to address some of the issues identified in the discussion paper. These factors are outlined in turn below.

Australia's corporate governance environment is already highly regulated

While the BCA recognises that improvements can be made in shareholder engagement within the existing environment, regulations imposing new corporate governance requirements or obligations on companies are not warranted. The issues raised in the discussion paper do not present systemic risks to effective corporate governance.

There has been substantial change to corporate governance regulation over recent years and now is the time for consolidation. More effort should be made to review and streamline existing regulation to reduce the regulatory burden and improve the ability for companies to engage with shareholders.

Effective non-regulatory mechanisms

There are a range of very effective mechanisms and incentives to drive effective shareholder engagement, outside of the legislative environment.

For example, there are formal mechanisms such as the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*, best practice guidance and codes of conduct developed by groups such as the BCA, AICD and CSA.

Companies and their directors also have a very strong interest in upholding their professionalism and reputation. Scrutiny and analysis of company practices to inform community and shareholder views is more intense than ever before with the advent of social media, along with greater financial analysis and commentary.

Australia is a high performer in corporate governance

The BCA considers that Australia has a high-performing corporate governance environment. This is evident in the World Economic Forum rankings[1] for the strength of these institutions, which placed Australia:

- fourth on the efficacy of corporate boards
- eighth on the strength of auditing and reporting standards
- eleventh on the ethical behaviour of firms.

With this in mind, we believe that Australian policymakers must be discerning when it comes to considering regulatory developments in other jurisdictions and their suitability in the Australian corporate governance environment.

Their focus must be on those regulatory initiatives adopted overseas that are well targeted and would lift both the efficiency and effectiveness of the AGM, shareholder engagement and annual reporting. In this regard, it is important to exercise caution in relation to regulatory proposals addressing perceived failures of corporate governance emanating from the global financial crisis in the United Kingdom and the United States, which in some cases may have limited relevance to Australia.

One size does not fit all

The BCA has consistently argued that in the area of corporate governance and shareholder communication, 'one size does not fit all'. What may work well for one company and its shareholders may not be suitable for another. Ultimately, each company and its shareholders need to agree the best approach to communication for their circumstances.

For publicly listed companies, the ASX Listing Rules provide corporate governance and shareholder communication obligations enforceable under the Corporations Act. Within these broad obligations, the company constitution then provides a platform for companies and their shareholders to tailor their approach as necessary to areas like the AGM .

Poorly targeted regulation can distort the focus of corporate governance

Strongly legislating a specific issue or requiring new processes and procedures in one area of corporate governance can place a disproportionate focus on this area, to the detriment of the broad focus that good corporate governance requires. It can also have unintended consequences.

Recent changes to regulation of executive remuneration are illustrative of this. While improving levels of shareholder engagement on remuneration issues, in some instances the laws have resulted in an over-emphasis on remuneration issues and have detracted focus from a range of other issues critical to shareholder value. The laws have also provided a vehicle for some groups to protest against a company on social and environmental issues unrelated to remuneration.

1. World Economic Forum, *The Global Competitiveness Report 2012–13*, p. 95.

Summary of BCA position

Like many sectors of the economy, shareholder engagement and AGMs are being impacted by the rapid development of technology and the changing preferences of shareholders and companies. Digital technologies are providing enhanced information and access to analysis, providing critical channels for shareholder engagement. Most institutional shareholders are engaging on a regular basis outside of the AGM.

In these circumstances, the AGM has become a less utilised channel, but it remains an important channel for many shareholders and it promotes the accountability of the board to shareholders, including through the board presenting to shareholders and addressing their questions face to face, with public scrutiny.

In the absence of an alternative to the AGM that is compelling to companies, their boards and shareholders, the BCA does not see a case for abolishing the AGM at this time. However, in line with our comments above regarding the notion that 'one size does not fit all', we acknowledge that there may be a case for streamlining the obligations surrounding the AGM for small companies and not-for-profits.

The BCA believes that the AGM is evolving and will continue to evolve in response to technological developments and the changing needs of companies and their shareholders. The BCA does not believe that prescriptive regulatory approaches or mandating of particular processes and procedures will assist in responding to changing needs.

The regulatory environment must afford companies the flexibility to adapt their methods of engagement according to individual circumstances and the needs of their shareholders.

With this in mind, the BCA would like to highlight the positions below in relation to some of the more topical issues raised by the discussion paper, as well as areas where there could be scope for improvement.

In summary, the BCA:

- Supports the removal of the rule allowing 100 members to call a general meeting of a company under section 249D of the Corporations Act.
- Supports the consideration of appropriate statutory safe harbours for forward-looking statements in annual reports that could be applied in Australia, drawing on experience from safe harbours applied in jurisdictions such as the United States.
- Believes that there is considerable scope to simplify regulatory requirements in relation to remuneration reporting to both assist shareholders and reduce the regulatory burden on companies and boards. In this context, we will be carefully analysing the draft legislation recently released by the government to see whether it meets these twin objectives.
- Does not believe there is a case for regulatory intervention in relation to the conduct of proxy advisers. However, in the interests of better corporate governance, we would support the development of appropriate industry principles and guidance for proxy advisers. We would support the enhancement of existing voluntary industry-based codes, or a new code as necessary, for investors using proxy advisers.
- Supports direct voting before the AGM on the basis that it could enhance shareholder engagement in decision making. On this basis, we believe that it should be recognised in legislation but its application should be at the discretion of the company and according to its constitution.
- Supports the use of online voting, webcasting and online participation in AGMs where it is technologically and financially viable for companies. Legislative recognition would need to avoid being unnecessarily prescriptive and mandating use of these facilities.

Right of 100 members to call a general meeting of a company

Flaws in this current threshold have been widely recognised and amendment of this provision is well overdue. For example, in 1999 the Parliamentary Joint Statutory Committee on Corporations and Securities concluded that "the present provision for 100 members to requisition a meeting of the company is inappropriate and open to abuse".[2]

The holding of an extraordinary general meeting can cost major companies up to $1 million. This is not justified for such a low threshold of shareholders (less than 0.05 per cent of shareholders for many major companies).

As long as the 100-member rule under section 249D remains in the Act, there will be impetus for groups to unreasonably exploit it.

While previous attempts to repeal this rule have not been successful, the BCA considers that it is now necessary to consider a new proposal to remove the rule from the Act or alternatively to amend it to prevent further abuse. We note that successive Commonwealth Governments have been supportive of removing this rule but that past attempts to repeal this rule have been stymied by state attorneys-general who must vote on certain amendments to the Corporations Act under the referral of power from the states.

Removing only the 100-member rule under section 249D would still leave adequate protections for shareholders to participate in corporate governance. Under section 249D there would still be provision for members with at least five per cent of the votes, that may be cast at the general meeting, to request directors to call an extraordinary general meeting.

The BCA does not believe that repeal of the rule would place Australia out of line with international practice. Australia currently ranks 20th out of 144 countries on the World Economic Forum's Global Competitiveness rankings for the protection of minority shareholder interests, well above other advanced economies such as the United Kingdom, Germany and the United States.

Forward-looking statements

Significant issues of liability arise from the current requirements in relation to forward-looking statements. Annual reports must detail matters that will affect performance in future years and the operating and financial review must include information on a company's future prospects. While in many cases such disclosures have a necessary degree of uncertainty and should be treated with some caution by investors, they are subject to strict provisions regarding misleading and deceptive conduct in the Corporations Act and there has been a trend for shareholder actions to be based on statements containing forward-looking information.

In order to improve the balance in this area, the BCA would support the consideration of appropriate statutory safe harbours for forward-looking information that could be applied in Australia, drawing on experience from safe harbours applied in jurisdictions such as the United States. Such safe harbours would provide relief for directors and companies that took reasonable care in meaningfully outlining the limitations and appropriate caution that should be applied to certain disclosures.

Clutter in annual reports

As the Financial Reporting Council's report *Managing Complexity in Financial Reporting* recently found, there are a range of factors driving increased complexity in financial reports, including:

- increasingly complex business operations
- complexities in the regulatory framework
- a more litigious business environment driving increasing disclosures
- developments in integrated reporting.

2. Report on matters arising from the Company Law Review Act 1998, October 1999, para 15.16.

The BCA is concerned at the growing demands on annual reports to meet legislative obligations for both financial and non-financial disclosures.

While the BCA does consider that these growing demands are creating a degree of clutter and CAMAC may be able to shed further light on these issues, these issues can only be addressed through broader financial reporting reform undertaken by standard setters such as the International Accounting Standards Board, regulators and groups such as the Financial Reporting Council that look at balancing the needs of a range of users, including shareholders.

In the short term, the BCA considers that there is considerable scope to simplify regulatory requirements in relation to remuneration reporting to both assist shareholders and reduce the regulatory burden on companies and boards. We will be outlining these issues in further detail in our submission to the draft legislative amendments recently released by the government, with a focus on whether the government's proposal comprehensively meets these twin objectives.

The BCA also considers that the government should generally avoid using annual reports in order to meet broader policy objectives. Reporting is a relatively blunt instrument in meeting such objectives, while placing administrative burdens on companies. A recent example of this is the option being canvassed by government to require companies to disclose in annual reports the proportion of people with a disability in their organisations, including in senior positions. While the BCA is highly supportive of efforts to lift the participation of people with a disability and our member companies are engaged in a range of innovative initiatives to support this, we believe that such reporting is ultimately ineffective and will contribute to the 'clutter' in annual reports to which CAMAC refers in the paper.

Finally, technology is already playing a significant role in increasing the accessibility of annual reports. The provision by some companies of complementary documents, such as shareholder presentations and annual reviews on company websites alongside annual reports, allows shareholders to obtain information quickly and to filter between areas where high-level information is sufficient and others where further detail is required.

The BCA considers that the idea of moving some information out of the annual report and onto the company website with a link in the annual report, particularly for standard information that does not change greatly from year to year, has merit and is worthy of further consideration.

Conduct of proxy advisers

The BCA notes the concerns expressed regarding the increasing influence of proxy advisers, which have been raised by stakeholders in response to this discussion paper and also in relation to previous inquiries such as the Productivity Commission's 2010 inquiry into executive remuneration.

The discussion paper canvasses the option of developing standards for proxy advisers and investors using proxy advisers, to promote professional conduct and reinforce the role of investor as the ultimate decision maker.

In relation to proxy advisers specifically, in the interests of better corporate governance, we would support the development of appropriate industry principles and guidance for proxy advisers in relation to:

- disclosing various information such as qualifications of their advisers, voting policies and any outsourcing of analysis
- how the adviser will engage with both its client and companies in a timely and constructive fashion to ensure fairness and completeness of advice and ultimate decision making.

In relation to proposals for standards for investors using proxy advisers, the BCA notes that the Productivity Commission has previously found that stewardship codes for investors are best developed on a voluntary basis by relevant industry bodies. Given that such codes already exist through bodies such as the Financial Services Council, we would support the enhancement of existing voluntary industry-based codes or a new code as necessary. This could include matters

such as disclosure of voting policies, details of engagement of proxy advisers and how it conducts analysis of resolutions before voting.

Direct voting

The BCA strongly supports efforts to increase direct shareholder engagement. Therefore we support direct voting before the meeting on the basis that it could enhance shareholder engagement in decision making. On this basis, we believe that it should be recognised in legislation but its application should be at the discretion of the company and according to its constitution. Supplementary best-practice guidance may also boost the adoption of direct voting before a meeting.

Online voting, webcasting, online participation

Online voting may serve to boost shareholder engagement and there should be no unnecessary impediments to companies utilising it where appropriate and in the best interests of shareholders and good governance. Any legislative recognition would need to avoid being unnecessarily prescriptive and requiring companies to provide online voting facilities.

The BCA also supports the use of webcasting to complement the physical presence of the meeting and notes that this technology is already utilised by many companies.

We also support greater online shareholder participation where this is technically feasible. There should not be unnecessary legislative impediments to companies utilising suitable technologies to this end.

Detailed response to issues raised in discussion paper

CAMAC question	Business Council of Australia position
Shareholder engagement	
1. The role of the board collectively as it relates to engagement with institutional/retail shareholders throughout the year, including leading up to the AGM.	The BCA considers that the broad legislative framework obliging the board to act in the best interests of the company, and by association shareholders, provides a strong underpinning for effective engagement throughout the year. There are always opportunities for improvement and sharing of best practice between companies and the BCA believes that these are best facilitated by existing guidance mechanisms such as the ASX Corporate Governance Council Principles and Recommendations. In particular, Principle 6 highlights the importance of respecting the rights of shareholders and facilitating the exercise of those rights.
2.The role of particular board members, such as the board chair or the chairs of board committees, in relation to engagement with institutional/retail shareholders.	The whole board has an overarching responsibility to shareholders. The board and relevant shareholders will be in the best position to determine who undertakes meetings on behalf of the board regarding particular matters. The BCA does not see a need for legislative intervention in this area.
3. The role of institutional shareholders throughout the year, including leading up to the AGM: – Is there a problem with having a peak AGM season and, if so, how might this matter be resolved? – Should at least some institutional shareholders be required or encouraged to report on the nature and level of their engagement with the companies in which they invest, in the manner provided for in the UK Stewardship Code or otherwise?	With most listed companies holding their AGMs in October and November each year, the BCA acknowledges that this can place pressures on institutional investors, with associated challenges for companies in actively engaging institutional investors and proxy advisors. However, extending the timeframe for holding the AGM would see AGMs conducted further after end-of-year financial results and begin to encroach on half-year results. Extending the timeframe for AGMs, staggering AGMs or extending reporting dates are possible options but if any of these options were pursued, it would be important to first ascertain that they will not lead to coordination difficulties in excess of those already experienced, or have other unintended consequences. The Productivity Commission has previously found that stewardship codes for investors are best developed on a voluntary basis by relevant industry bodies. Therefore the BCA does not support regulatory intervention but would support the enhancement of existing voluntary industry-based codes or the development of a new voluntary industry-based code if necessary. Such codes already exist through bodies such as the Financial Services Council.
4. Corporate briefings	Given that corporate briefings are already heavily regulated by continuous disclosure and other requirements, the BCA does not believe that further legislative intervention is necessary. Prescriptive legislative intervention could unintentionally limit the flexibility of companies to engage shareholders applying technology and other innovative tools to their corporate briefings.
5. Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning the role of proxy advisers, including:	The BCA notes the concerns expressed regarding the increasing influence of proxy advisers, which have been raised by stakeholders in response to this discussion paper and also in relation to previous inquiries such as the Productivity Commission's 2010 inquiry into executive remuneration. The discussion paper canvasses the option of developing standards for investors using proxy advisers and proxy advisers themselves to promote

– Standards for investors using proxy advisers, including the extent to which these investors should be entitled to rely on the advice of proxy advisers in making voting decisions, or , alternatively, whether those investors should have some obligation to bring an independent mind to bear on these matters. – Standards for proxy advisers.	professional conduct and reinforce the role of investor as the ultimate decision maker. In relation to proxy advisers specifically, in the interests of better corporate governance, we would support the development of appropriate industry principles and guidance for proxy advisers in relation to: Disclosing various information such as qualifications of their advisers, voting policies and any outsourcing of analysis. How the adviser will engage with both its client and companies in a timely and constructive fashion to ensure fairness and completeness of advice and ultimate decision making. In relation to proposals for standards for investors using proxy advisers, the BCA notes that the Productivity Commission has previously found that stewardship codes for investors are best developed on a voluntary basis by relevant industry bodies. Therefore the BCA does not support regulatory intervention, but would support the enhancement of existing voluntary industry-based codes or the development of a new voluntary industry-based code if necessary. Such codes already exist through bodies such as the Financial Services Council.
6. Greater use be made of technology to promote shareholder engagement outside the AGM.	BCA members are utilising a range of technologies such as webcasting, social media and dedicated investor centre websites to increase shareholder engagement outside the AGM. The way in which technology is used is a matter for individual companies and should remain that way to account for the cost considerations of different-sized companies and varying shareholder profiles.

7. Amendment to the right of 100 members to call a general meeting of a company.	The right of 100 members to call a general meeting should be abolished. In supporting effective shareholder engagement, we believe that an appropriate balance needs to be struck so that the exercise of rights by shareholders does not unintentionally compromise the efficient governance of companies. The BCA is concerned with the ongoing potential for abuse of provisions under section 249D of the Act that allow just 100 shareholders to require that directors convene an extraordinary general meeting (EGM). To illustrate the incredibly small minority of shareholders that can demand an EGM regardless of the genuine urgency of their issues, it is useful to consider how the 100-member rule would apply to a handful of major Australian companies. For example, this would represent: • less than 0.03 per cent of all Woolworths shareholders • approximately 0.0125 per cent of all Commonwealth Bank shareholders • approximately 0.007 per cent of all Telstra shareholders. The conduct of EGMs to consider matters that can be properly addressed at annual general meetings consumes considerable unnecessary resources and diverts management from the day-to-day operations of the company. EGMs for large listed companies can cost up to $1 million. Flaws in this current threshold have been widely recognised and amendment of this provision is well overdue. For example, in 1999 the Parliamentary Joint Statutory Committee on Corporations and Securities concluded that "the present provision for 100 members to requisition a meeting of the company is inappropriate and open to abuse".[3] Removing only the 100 member-rule under section 249D would still leave adequate protections for shareholders to participate in corporate governance. Under section 249D there would still be provision for members with at least five per cent of the votes, that may be cast at the general meeting, to request directors to call an EGM.
Annual Report	
8. Unnecessary information ('clutter') in annual reports	As the Financial Reporting Council's report *Managing Complexity in Financial Reporting* recently found, there are a range of factors driving increased complexity in financial reports, including: • increasingly complex business operations • complexities in the regulatory framework • a more litigious business environment driving increasing disclosures • developments in integrated reporting. The BCA is concerned at the growing demands on annual reports to meet legislative obligations for both financial and non-financial disclosures. While the BCA does consider that these growing demands are creating a degree of clutter and CAMAC may be able to shed further light on these issues, these issues can only be addressed through broader financial reporting reform undertaken by standard setters such as the International Accounting Standards Board, regulators and groups such as the Financial Reporting Council, which look at balancing the needs of a range of users including shareholders.

3. Report on matters arising from the Company Law Review Act 1998, October 1999, para 15.16.

	In the short term, the BCA considers that there is considerable scope to simplify regulatory requirements in relation to remuneration reporting to both assist shareholders and reduce the regulatory burden on companies and boards. In this context, we will be carefully analysing the draft legislation recently released by the government to see whether it meets these twin objectives. The BCA also considers that the government should generally avoid using annual reports in order to meet broader policy objectives. Reporting is a relatively blunt instrument in meeting such objectives, while placing administrative burdens on companies. A recent example of this is the option being canvassed by government to require companies to disclose in annual reports the proportion of people with disability in their organisations, including in senior positions. While the BCA is highly supportive of efforts to lift the participation of people with a disability and our member companies are engaged in a range of innovative initiatives to support this, we believe that such reporting is ultimately ineffective and will contribute to the 'clutter' in annual reports to which CAMAC refers in the paper. Finally, technology is already playing a significant role in increasing the accessibility of annual reports. The provision by some companies of complementary documents such as shareholder presentations and annual reviews on company websites alongside annual reports, allows shareholders to obtain information quickly and to filter between areas where high-level information is sufficient and others where further detail is required. The BCA considers that the idea of moving some information out of the annual report and onto the company website with a link in the annual report, particularly for standard information that does not change greatly from year to year has merit, and is worthy of further consideration.
9. Should the reporting requirements be redesigned in any respect, including along any of the lines adopted, or under consideration, in overseas jurisdictions, such as having a strategic report and an annual directors' statement?	The BCA considers that before considering the redesign of reporting requirements along the lines of those adopted in other jurisdictions, such as having a strategic report and annual directors' statements, analysis would need to be undertaken of: • Underlying causes of complexity for current reporting arrangements and whether redesign along these lines would simply exacerbate such complexity and increase the compliance burden. • The nature of overseas jurisdictions' policies, including the problem they were introduced to address and the extent to which similar problems exist in Australia. • The extent to which Australian companies with large shareholder bases are already meeting the objectives of such policies through the publication of documents such as annual reviews.
10. What, if any, issues of liability might arise in the event of changes to the reporting requirements, particularly in relation to forward-looking statements, and how might this matter be dealt with?	Significant issues of liability arise from the current requirements in relation to forward-looking statements. Annual reports must detail matters that will affect performance in future years and the operating and financial review must include information on a company's future prospects. While in many cases such disclosures have a necessary degree of uncertainty and should be treated with some caution by investors, they are subject to strict provisions regarding misleading and deceptive conduct in the Corporations Act and there has been a trend for shareholder actions to be based on these forward-looking statements.

	In order to improve the balance in this area, the BCA would support the consideration of appropriate statutory safe harbours for forward-looking information that could be applied in Australia, drawing on experience from safe harbours applied in jurisdictions such as the United States. Such safe harbours would provide relief for directors and companies that took reasonable care in meaningfully outlining the limitations and appropriate caution that should be applied to certain disclosures.
11. How might technology best be employed to increase the accessibility of annual reports?	Companies should in principle have the flexibility to utilise technology wherever it provides net benefits. In this context, particular technology to increase the accessibility of annual reports should not be the subject of legislative mandate. Technology is already playing a significant role in increasing the accessibility of annual reports. The provision by some companies of complementary documents such as shareholder presentations and annual reviews on company websites alongside annual reports, allows shareholders to obtain information quickly and to filter between areas where high-level information is sufficient and others where further detail is required. The BCA considers that the idea of moving some information out of the annual report and onto the company website with a link in the annual report, particularly for standard information that does not change greatly from year to year, has merit and is worthy of further consideration.
12. What, if any, initiatives might be introduced to cater for future innovations in reporting?	In the first instance, the BCA considers that priority must be placed on making existing reporting practices work better, particularly getting a better regulatory balance on disclosures. If a financial reporting laboratory of the type established in the United Kingdom was ever to be established in Australia, it would have to be given the right government support and mandate to drive effective change in financial reporting on the ground, not just in concept. It would also need to have a high-level of engagement with business.
The AGM	
13. The statutory time frame for holding an AGM	It is not clear that changes to the statutory time frame for holding an AGM would improve the effectiveness of the AGM. See comments at Question 3 in relation to the peak AGM season.
14. In what respects, if any, might the requirements for information to be included in the notice of meeting for an AGM be supplemented or modified?	The current requirements for information to be included in the notice are appropriate and the BCA does not consider that they need supplementing or modification at this time.
15. How might technology be used to make this notice more useful to shareholders?	Technology is already being utilised to enhance shareholder convenience, with shareholders able to receive meeting materials electronically and meeting notices published electronically.
16. Might any other documents usefully be sent with the notice of meeting, and, if so, what?	It is not clear that further documents being sent with the notice of meeting will improve clarity and convenience for shareholders. If anything, further documentation requirements could have the unintended impact of increasing confusion and overloading shareholders.
17. Should there be provisions for companies to send information	The BCA supports the conclusions reached in the previous Companies and Securities Advisory Committee report on *Shareholder Participation in*

about an AGM directly to the beneficial owners of shares held by nominees and, if so, what type of information?	*the Modern Listed Public Company*. As the discussion paper notes, that report concluded that legislative procedures were unnecessary as: • people have the choice of being registered as shareholders or holding their shares through nominees • if they choose the latter approach then they can make their own arrangements regarding the receipt of information • compliance with mandatory notification requirements could impose too great an administrative burden on companies.
18. Should there be any provision for beneficial owners of shares in a company to participate in the AGM of that company and, if so, how?	See response to Question 17.
19. Should there be any change to the threshold tests for shareholders placing matters on the agenda of an AGM?	The threshold tests under sections 249N and 249P of the Corporations Act should not be changed, and should certainly not be reduced. Rather, the BCA considers that the priority should be on abolishing the 100-member rule in relation to the requirement to hold an extraordinary general meeting under section 249D of the Corporations Act.
20. Should there be any change to the timing requirements for the calling of an AGM, including for shareholders to place matters on the agenda of an AGM, to seek the circulation of statements concerning any resolution, or to nominate persons for the position of director?	The BCA is not aware of any systemic issues with the timing of the calling of an AGM impeding the ability of shareholders to place matters on the agenda. The practical requirements of holding an AGM for large companies generally mean that the date is organised months in advance, allowing companies to give substantially more than the minimum 28 days' notice of a general meeting.
21. Should companies be required to publish a pre-agenda notice and, if so, what should be the contents and timing of that notice?	The best means for companies to give shareholders appropriate notice of a general meeting is to advise shareholders of the date for the AGM as soon as possible. This does not require an additional legislative requirement for AGM documentation. However, companies should be actively encouraged in best-practice guidance to announce AGM timing to shareholders as early as practicable.
22. Does the current law concerning excluded material either create undue difficulties for shareholders who wish to criticise directors or, conversely, unduly restrict directors in vetting out information to be circulated to shareholders at the company's expense?	It is entirely appropriate that companies exclude certain resolutions where they are not able to be understood, do not have an appropriate legal basis to be acted upon or are defamatory in nature. These exclusions should not impede shareholders from exercising their lawful rights.
23. Should shareholders have greater scope for passing non-binding resolutions at AGMs?	The BCA believes that there is a need to uphold the different roles of the board and shareholders. Shareholders are able to exercise their rights to remove directors or sell their shareholding. Greater scope for passing non-binding resolutions could place boards in a precarious position and lead to 'micro management' of companies by shareholders, undermining the important distinction between the central role of boards and shareholders.
24. What, if any, additional legislative or best practice procedures should	The BCA does not see the need for additional legislative requirements in this area. We note that:

be adopted for companies to seek the views of shareholders on issues they would like discussed at the AGM, or to invite shareholders to submit questions prior to the AGM?	• The chair must already provide opportunities for shareholders to ask questions of directors and the auditor. • As noted in previous BCA publications, several companies already adopt the practice of inviting questions from shareholders before the AGM, including Telstra, Caltex and the Commonwealth Bank. • Some companies have also adopted information booths for shareholders to directly engage on their issues.
25. Should there be some obligation on the auditor (or the representative of the auditor) to speak at the AGM?	The auditor already has an obligation to be present at the AGM and answer questions of shareholders. A specific obligation on an auditor to speak at the AGM is likely to become a formality that would not engender enhanced shareholder engagement.
26. What, if any, obligations should a company or a company auditor have to answer questions from shareholders?	The existing provision under section 250T of the Corporations Act for an auditor to respond to questions is sufficient.
27. Should any matter be excluded from or, alternatively, added to the business of the AGM?	The BCA does not consider that any matter should be excluded or alternatively added to the business of the AGM.
28. What, if any, changes are needed to the current position concerning: • the general functions and duties of the chair? • the chair ensuring attendance of particular persons at the AGM? • the chair moving motions? • motions of dissent from a chair's rulings?	The chair has a duty to ensure that shareholders have a reasonable opportunity to ask questions and make comments, while also maintaining order of proceedings. Large companies will generally have the whole board in attendance and therefore there is no need for a formal requirement for the chair to ensure attendance of particular persons at the AGM. The BCA considers that this current practice is appropriate and that more detailed legislative provisions in this area would run the risk of unnecessarily constraining chairs in how they conduct the meeting.
29. Should a chair be obliged to provide shareholders with a reasonable opportunity to discuss a resolution before it is put to the vote?	See response to Question 28.
30. Should a chair have the power to impose any time, or other, limits on an individual shareholder speaking at the AGM?	In fulfilling the duties outlined above, the chair also has the ability to limit an individual speaking at an AGM in order to maintain order and to give other shareholders a reasonable opportunity to speak.
31. What changes, if any, should be made to the current requirements concerning: • informing shareholders of their right to appoint a proxy? • the proxy form • pre-completed proxies? • notifying the company of the proxy appointment? • providing an audit trail for lodged proxy votes?	The BCA notes the findings of the Australian Committee of Superannuation Investors (ACSI) report *Institutional Proxy Voting in Australia* and its recommendations to strengthen some operational weaknesses in the systems used to cast votes. The BCA would support further exploration of these recommendations. We do not believe that any other changes are warranted to proxy voting.

• the record date and the proxy appointment date? • irrevocable proxies? • directed and undirected proxies? • renting shares? • proxy speaking and voting at the AGM?, or • any other aspect of proxy voting?	
32. Should direct voting before the meeting be provided for by legislative or other means, and if so, what matters should be covered in any regulatory structure?	The BCA supports direct voting before the meeting on the basis that it could enhance shareholder engagement in decision making. On this basis, we believe that it should be recognised in legislation but its application should be at the discretion of the company and according to its constitution. Supplementary best-practice guidance may also boost the adoption of direct voting before a meeting.
33. In what circumstances, if any, should access to pre-meeting voting information be permitted?	If granted too widely, then access to pre-meeting voting information could encourage its vexatious use, increase costs and raise privacy concerns. Shareholders should not have rights of access other than those granted by a court order. Auditors and others should only be given access where agreed to by the company.
34. In what manner if any, should access to pre-meeting voting information be regulated before discussion on a proposed resolution?	This should be a matter for the chair.
35. In what manner, if any, should the current requirements concerning the disclosure of pre-meeting votes before voting on a resolution be amended?	This should be a matter for the chair.
36. Should there be legislative or other recognition of online voting during the course of an AGM and, if so, in what respects should this form of voting be regulated?	Online voting may serve to boost shareholder engagement and there should be no unnecessary impediments to companies utilising it where appropriate and in the best interests of shareholders and good governance. Any legislative recognition would need to avoid being unnecessarily prescriptive and requiring companies to provide online voting facilities.
37. Do any issues arise concerning voting exclusions on resolutions that must, or may, be considered at an AGM and, if so, how might those issues best be resolved?	In relation to voting exclusions on the remuneration report, it is a well-understood principle that directors and executives should not vote on their own remuneration. On this basis, the BCA believes that provision under the Corporations Act for offence provisions on a strict liability basis in relation to voting exclusion on the remuneration report is a disproportionate response to risks in this area.
38. Should any changes be made to the current provisions regarding voting by show of hands?	The chair should retain the ability to utilise voting by show of hands for routine or uncontentious matters.
39. What legislative, or other, verification initiatives, if any, should be introduced concerning voting by poll at an AGM?	Current provisions give the chair discretion to determine how votes are undertaken and this should remain the case to ensure the efficiency and effectiveness of proceedings.

40. Should one or more verification requirements apply in all instances or only if, say, a threshold number of shareholders requires it?	The BCA considers that appropriate mechanisms for verification of voting should be promoted through best practice guidance rather than mandated in legislation. Research from the Australian Institute of Company Directors suggests that a significant proportion of large companies already verify voting outcomes.
41. Should any steps be taken to promote more consistency in the disclosure to the market of voting results?	The BCA is not aware of any systemic issues in relation to the consistency of voting results released to the market.
42. Following the AGM, what, if any, rights of access should shareholders generally, or the person proposing a resolution, have to voting documents?	The existing rights to inspect voting documents, which must be obtained through a court order, strike an appropriate balance between upholding shareholder rights on the one hand and preventing vexatious use of such provisions by special interest groups.
43. What, if any, changes should be made to the requirements concerning the recording of details of voting in the minutes of the AGM?	The BCA is not aware of any systemic issues in the recording of details of voting in the minutes of the AGM that would give rise to the need for changes.
44. Should there be a statutory minimum period for retention of records of voting on resolutions at an AGM and, if so, for what period?	The BCA considers that determining whether a statutory minimum period is necessary and what that period is, requires further analysis of: • current practice adopted by companies • how current practice aligns with other provisions in the Corporations Act for the retention of documents, which generally require retention of seven years of records • how useful it is for companies to retain voting records for long periods, by which time there may be no practical way of revising the decision already made.
45. Should there be any legislative initiatives in regard to the election of directors, including in relation to: • the frequency with which directors should stand for re-election? • the right of shareholders to question candidates (and receive answers)? • the voting procedure?	The BCA does not believe that legislative changes are warranted to increase the frequency with which directors stand for re-election. Such frequent re-election would be unnecessarily disruptive and undermine the kind of long-term strategic decision making for which boards should be responsible. We also note that this is an area that is addressed under the ASX Listing Rules. We note that shareholders who do believe annual re-election to be appropriate in particular circumstances already have the power to propose changes to the company constitution regarding the frequency with which directors should stand for re-election. We also note that companies that are also listed in the US and UK have adopted more frequent re-election procedures to align with the regulatory arrangements in these jurisdictions. Companies and shareholders should retain this flexibility to tailor their re-election procedures to their particular circumstances. The BCA does not consider that legislative changes are necessary in relation to the right of shareholders to question candidates or the voting procedure. The chair of the meeting can determine if directors and candidates address the AGM. Companies also provide detailed information about candidates prior to the AGM.
46. Are there any matters concerning	The BCA notes that there is inconsistency between the United Kingdom

dual listing that should be taken into account in the regulation of AGMs?	and Australia in relation to the practice for director nominations, which may present issues in relation to AGMs. In Australia, it is possible for any shareholder to nominate someone for a board as long as their nomination is made on time and with the candidate's consent. In contrast, in the United Kingdom, a candidate requires support of 5 per cent of voting rights. The BCA would encourage further identification and analysis of the prevalence of such anomalies by CAMAC in consultation with dual-listed companies to determine if they warrant regulatory change at this point in time.
47. Are there any problems in the voting or other aspects of AGMs for overseas holders of shareholding interests in Australian regulated companies?	The BCA is not aware of any problems in this area.
48. For some or all public companies, should the functions of the AGM be changed in some manner, or the obligation to hold an AGM be abolished?	The BCA believes that the AGM should be retained as it promotes accountability to shareholders and shareholder engagement. The AGM should continue to facilitate both decision making functions and shareholder feedback and discussion. The legislative framework should allow the format of the AGM to be adjusted and evolve over time in line with the preferences of companies, their boards, shareholders and the development of technology. In our view, this requires a flexible and in many instances, non-regulatory approach rather than a prescriptive legislative approach.
49. What technological developments might be taken into account in considering the possible functions of the AGM?	The BCA supports the use of webcasting to complement the physical presence of the meeting and notes that this technology is already utilised by many companies. We also support greater online shareholder participation where this is technically feasible. There should not be unnecessary legislative impediments to companies utilising suitable technologies to this end.
50. For some or all public companies, and if the AGM is retained in some manner, what legislative or other initiatives, if any, should there be in regard to the possible formats of the AGM?	See 48 and 49.
51. In this context, what technological developments might be taken into account in considering possible formats for the AGM?	See 48 and 49.

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