

9 June 2021

Mr Hayden Fisher
Associated Director
The Centre for International Economics
Level 7
8 Spring Street
Sydney NSW 2000

By email: hfisher@thecie.com.au

Dear Hayden,

New South Wales Treasury – Issues Paper on electronic meeting and voting for incorporated associations

CPA Australia represents the diverse interests of more than 168,000 members working in over a 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia supports proposals that will permanently allow the use of technology to conduct meetings and voting by New South Wales (NSW) incorporated associations. This is a sensible step that will incorporate modern means of communication and conduct of operations by associations in a digitally enabled economy. However, any technology-based solutions incorporated into the Associations Incorporation Act 2009 (the Act) and associated regulations should ensure that rights of members under the Act are protected. We provide below, further details in respect of these overarching comments.

We note the model constitution included in regulations already allows for committee and general meetings to be conducted by "Audio-Visual Link" (AVL) and for postal or electronic ballots to be held to determine any issue or proposal. The issues paper highlights that 8,214 associations that adopt the model constitution are eligible to avail of these options, but it is unclear how many of the remaining 28,777 associations are eligible to do so. We support the proposal that making a permanent amendment to the Act will allow all associations to avail of these options and avoid the unnecessary cost and effort associated with associations amending their constitution if they do not adopt the model constitution.

We suggest that appropriate regulatory oversight and guidance by the NSW Office of Fair Trading will be important in ensuring the success of these important changes and protecting the interests of members and other stakeholders. Such oversight and guidance will support the proposed changes and ensure the right balance is achieved between:

- technology-based simplification for associations to holding meetings and ballots, and
- ensuring the rights of members are protected and that they are not disadvantaged in any way by the introduction of proposed technology-based statutory provisions.

We highlight below a few matters that we believe would be better addressed in guidance developed by the NSW Office of Fair Trading, whilst providing a principled framework through provisions in the Act:

- cybersecurity considerations associated with the use of technology to hold meetings and ballots
- guidelines around proxy voting in AVL-enabled or hybrid meetings

- guidelines around what constitutes a reasonable opportunity for persons to participate in an AVL-enabled meeting. For example, such guidance could include criteria to ensure members participating in an AVL-enabled meeting have the opportunity to be heard and provided a response where appropriate
- guidelines to ensure sufficient information is provided by associations to allow members to participate in the meeting by means of technology. For example, sufficient information could include a hyperlink, secure access details such as passwords, testing or trial facilities etc.
- consideration of backup plans in case of technology or other failure experienced by the association hosting the AVL-enabled meeting.

In addition to considering technology-enabled meetings and ballots, any proposed legislation will also need to consider the option of electronic communication of documents by an association. For example, s44 of the Act requires Tier 1 associations to submit the previous year's financial statements and auditor's report at the Annual General Meeting (AGM). The Issues Paper does not contemplate the delivery mechanism (electronic or otherwise) for such documents when an AGM is to be held using electronic means, or indeed other documents that may be provided to members by the association. We suggest that along with the introduction of a permanent option to conduct meetings and voting using electronic means, the Act also includes an option for associations to provide documents to members by the same means.

If you have any queries about this submission, contact Ram Subramanian, Senior Manager – Reporting Policy, on 03 9606 9755 or ram.subramanian@cpaaustralia.com.au.

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager,
Policy and Advocacy