

14 October 2011

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: corporations.joint@aph.gov.au

Dear Committee Secretary,

**Consumer Credit and Corporations Legislation Amendment
(Enhancements) Bill 2011**

The Australian Institute of Company Directors notes the inquiry of the Parliamentary Joint Committee on Corporations and Financial Services into the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011* (the Bill).

We confine our comments to Schedule 7 of the Bill – “Voting at AGMs of public companies.” To assist the Committee, we attach a copy of a letter from John Colvin to the Hon David Bradbury dated 29 June 2011. The letter provides the background as to why a legislative amendment is required to section 250R of the Corporations Act 2001 (C’th). The letter identifies the drafting issue and the reason for the amendment to subsection 250R(5) now proposed in the Bill.

If you would like to discuss the reasons for the amendment further, you are welcome to contact me on (02) 8248 6600.

Yours sincerely,

Rob Elliott
General Manager of Policy/General Counsel

29 June 2011

The Hon David Bradbury MP
The Parliamentary Secretary to the Treasurer
PO Box 6022
Parliament House
Canberra ACT 2600

By Email: David.Bradbury.MP@aph.gov.au

Dear Minister

Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011

I refer to the passing in the Senate of the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011* (the Bill) on 20 June 2011. I am writing to express the concerns of the Australian Institute of Company Directors over an issue with the drafting of the Bill, relating to the ability of a Meeting Chair to exercise undirected proxies in respect of an advisory vote on a remuneration report and any related board spill resolution. We encourage the Government to reexamine this issue with a view to taking further action to address possible consequences.

As you are aware, there is a prohibition on key management personnel and their closely related parties from voting on the advisory resolution to adopt a remuneration report and a related spill resolution, which extends to voting undirected proxies on the resolution (see sections 250R (4), 250R (5) and section 250V(2) in the Bill). However, section 250BD (2) in the Bill is intended to permit the Meeting Chair to exercise proxy votes in respect of, among other things, the advisory vote on a remuneration report or a related spill resolution, provided their appointment as a proxy expressly authorises this.

Section 250R (10) in the Bill, which states that the prohibitions in sections 250R (4) and (5) in the Bill have effect despite anything else in the Act, would appear, on the face of it, to negate the operation of section 250BD (2) (the drafting issue) – which we do not believe was or should be the intention.

Retaining the ability of the Meeting Chair to exercise undirected proxies is something that Company Directors and others have advocated strongly for. Removing this ability:

- would remove shareholder rights;
- is likely to lead to companies receiving a higher vote against a remuneration report or in favour of a spill resolution, than otherwise would be the case (those shareholders who otherwise would have given undirected proxy votes may well choose not to vote on the resolution); and
- is likely to create confusion among shareholders as some resolutions in a notice of meeting will provide for undirected votes to the Meeting Chairman, while other resolutions will not.

We are aware of a number of approaches having been made to your office and to Treasury concerning the drafting issue, ahead of the Bill being passed in the Senate. We are led to

believe the Government is relying on comments made in the Second Reading Speech to the Bill and in Parliament, to give effect to section 250BD (2).

The feedback we are receiving, in addition to concerns we have previously outlined with the Bill, is that the drafting issue in the Bill is creating real practical difficulties for companies preparing for an annual general meeting under the new requirements. This is because there is still uncertainty relating to possible judicial interpretation of the drafting issue, and some companies may feel compelled not to provide for the Meeting Chair to receive undirected proxy votes in relation to advisory votes for remuneration reports or related spill resolutions.

We also consider the drafting issue will create an additional red tape burden for companies, particularly if they are expected to read the relevant parts of Hansard and the Second Reading Speech to the Bill to ascertain the intent of the Government.

It is unfortunate the drafting issue has occurred. We believe it could have been easily avoided if there was a longer and more thorough consultation process in respect of the Bill. You are aware of our concerns regarding the consultation process in respect of the draft Bill, so I will not go over these again.

We would ask that the drafting issue be examined further with a view to ensuring the intention of the Bill is given effect, the compliance burden for companies is minimised, and companies preparing for annual general meetings are provided with greater certainty.

I would be happy to discuss this issue further with you if needed.

Yours sincerely

John HC Colvin
CEO & Managing Director