

8 January 2015

Dr Kathleen Dermody
Committee Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Submitted via [online upload facility](#)

Dear Dr Dermody,

Inquiry into the Corporations Legislation (Deregulatory and Other Measures) Bill 2014

Thank you for your letter of 5 December 2014 inviting the Australian Council of Superannuation Investors (ACSI) to make a submission to the above Inquiry currently being undertaken by your Committee.

About ACSI

By way of background, ACSI is a collaboration between 31 Australian profit-for-members superannuation funds and 6 major international pension funds and asset owners, who use us to advance their collective ownership rights to improve the management of environmental, social and governance (ESG) investment risks and opportunities by Australian listed companies. Full details on ACSI and its research publications, policy positions and members are available on our website (www.acsi.org.au).

ACSI's Australian member funds in aggregate manage over \$400 billion of superannuation assets on behalf of more than 8 million Australian superannuation fund members. Of this total, approximately 30% is invested in Australian listed equities, which translates to approximately 11% of the average ASX 200 listed company (and growing in accordance with the growth of the Australian superannuation industry generally).

This scale of investment in the Australian listed equities market means our members have a strong interest in the Corporations Legislation and broader corporate regulatory environment in Australia, including the specific items that are subject of the Bill currently under consideration by the Committee.

ACSI's Response

We have reviewed each of the deregulatory and other measures proposed in the Bill and would like to confirm that in each case these measures are supported by ACSI.

The 100 Member Rule

ACSI accepts that the proposed removal of the right of 100 or fewer shareholders to require directors to call a general meeting (Section 249D(1) of the Corporations Act), whilst a diminution of existing shareholder rights, is a reasonable measure in the interests of cost efficiency and removal of unnecessary administration burdens on companies.

Our support for this measure is predicated on two important provisos:

- First, the retention in Section 249D of the 5% threshold for shareholders to be able to requisition a general meeting, and for the ability of as few as 100 members (without necessarily reaching the 5% threshold) to put a resolution on the agenda of a general meeting that has been called by the company's directors. We note that both of these shareholder rights are preserved in the Act and specifically confirmed in the Explanatory Memorandum to the Bill.
- Second, our belief that the effect of the change will be relatively inconsequential in practice, given the negligible actual invocation of the "100 Member Rule" by minority shareholders to requisition an 'out of cycle' general meeting since the advent of this rule in the late 1990s, and the ongoing ability of minority shareholders to submit resolutions to regular AGMs.

On this basis we are prepared to accede to the relatively modest change that is being proposed to shareholders' rights in this case on cost-benefit grounds. **However, we also take this opportunity to point out that there are a number of other areas of Corporations Act reform that are not addressed in this Bill but which we strongly believe *would* have the potential to significantly improve the corporate accountability framework in Australia, at negligible if any cost to companies.**

One very pertinent contemporary example of this would be the removal of companies' ability to circumvent the 'two-strikes' rules by confining votes to a show of hands at their AGM rather than calling a poll - a situation which arose on at least two occasions to our knowledge among mid-cap ASX-listed companies (Greencross Limited and Infomedia Limited) during the recent 2014 AGM season. Another example is the opportunity to introduce modest regulatory reforms to streamline the efficiency of Australia's proxy voting system, a topic that ACSI addressed in some detail in a 2012 submission to the Review of the AGM and Shareholder Engagement undertaken by the (now-defunct) Corporations and Markets Advisory Committee (CAMAC).

ACSI appreciates that the issues are outside the direct remit of the Committee's current review of the specific measure in the Bill, but would welcome the opportunity to brief Committee members on them should they or other Parliamentary colleagues or officials be interested.

Other Measures in the Bill

ACSI supports the proposed changes to listed companies' remuneration reporting, such as to require disclosure of the number (as opposed to the value) of lapsed options in a given reporting year, and to remove the requirement to specify the proportion of remuneration attributable to options granted to key management personnel (proposed amendments to Section 300A). These amendments should assist in making the information in remuneration reports more relevant to institutional investors and their service providers including ACSI, whilst also removing some significant administrative overheads from listed companies.

The remaining measures proposed in the Bill (relaxation of remuneration reporting requirements for unlisted reporting entities, the clarification of companies' ability to determine a financial year of less than 12 months, exempting certain companies limited by guarantee from the need to appoint an auditor, and clarifying the ability of members of the Takeovers Panel to work on the Panel whilst outside Australia) all appear sensible measures of a general housekeeping nature, and not to raise any significant issues of concern to ACSI or its members.

Conclusion

In conclusion, as noted above, ACSI would welcome the opportunity to further discuss opportunities for substantive improvements to Australia's corporate regulation framework beyond those presently under consideration by the Committee. We do however, support the particular measures contained in the Bill as far as they go, principally on cost-benefit and efficiency grounds.

I trust that our comments are of assistance to the Committee. Please contact me or Paul Murphy, ACSI's Executive Manager Institutional Investment & Policy [REDACTED] should you require any further information on ACSI's position.

Yours sincerely

Gordon Hagart
Chief Executive Officer