

25 August 2017

Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Fitt

**Inquiry into Corporations Amendment (modernisation of
members registration) Bill 2017
Answers to questions on notice**

We refer to the appearance of Governance Institute of Australia (Governance Institute) before the Inquiry Hearing of the Senate Economics Legislation Committee into the Corporations Amendment (Modernisation of Members Registration) Bill 2017 on 2 August 2017.

Answers to questions on notice

Governance Institute notes that we were asked to provide answers to the following questions on notice (we refer to the transcript of the Inquiry Hearing)

Page 26 CHAIR '*...Using an organisation. For example, Link and Computershare already hold a register of members of all these organisations or a register of shareholders. If you were not here for earlier testimony, there was a proposal put forward that potentially if you had a member or a shareholder that wanted to gain access to those databases, rather than gain access to the entire database, they approach a third party who has that access and they are the ones that disseminate the information. So no one member ever gets access to the data base.*'

Page 27 SENATOR XENOPHON '*....There is a third party, be it ASIC or someone delegated by ASIC, to do this so that it ticks the boxes that it is for a proper purpose. It is to deal with issues relating to the governance or issues of legitimate concern for the members of the association. Those email addresses are kept by that third party. It probably has a supervisory role with liability issues if they breach that. So there are some strict safeguards, providing it ticks those boxes of a legitimate purpose....*'

While the issue which was the subject of the Inquiry Hearing was an alleged failure of governance in a particular organisation, the proposed amendment will impact all companies covered by the Corporations Act. Our view is that the Committee would need to take into account the following issues when considering the issues of governance raised during this Inquiry Hearing:

- If a third party was contemplated as being the conduit by which communications were circulated to members, we refer to our evidence on page 26 of the transcript and confirm that the decision about whether the communication should be sent to shareholders must be made by the company and not by a third party. The obligation to

provide the register under section 173 of the Corporations Act is that of the company and strict liability applies to the obligation to provide a copy of the register. To comply with its obligations under the Corporations Act, the company must be satisfied that the request for a copy of the register is not for an improper purpose and it is bound at law to undertake due diligence to discharge its obligation to ensure that the application is bona fide. This process is usually based on limited information provided by the party seeking a copy of the register whereby they confirm it is not to be used for an improper purpose, but are not always forthcoming with the exact details of how the register will be used. Regulation 2C.1.03 of the Corporations Regulations 2001 prescribe what is considered to be an improper purpose for obtaining a copy of the register. If the reason given by the requester does not meet one of the criteria under the legislation, their request is considered to be for a proper purpose. We note that this existing provision places corporations in a difficult position when trying to protect the privacy and general interest of its shareholders and/or members. It is not possible to further comment upon the proposed mechanism of this proposal without knowing its detail

- Listed companies in Australia are subject to a significant disclosure regime which is aimed at making them accountable to their shareholders and address the corporate governance shortfalls identified in the evidence of other parties during the Inquiry Hearing. We refer to our evidence on page 29 of the transcript and reiterate the points made about the significant differences between listed companies and membership organisations as regards disclosure and accountability obligations including:
 - continuous disclosure requirements under the Corporations Act and the ASX Listing Rules
 - annual reporting requirements, including the remuneration report which is voted on at the AGM and is subject to the 'two strikes rule'
 - disclosure on an 'if not, why not' basis of matters included in the ASX Corporate Governance Principles and Recommendations
 - public, media, broker and investor scrutiny
 - stewardship obligations of institutional shareholders.
- The Corporations Act includes mechanisms by which members can move a resolution at a general meeting and have material related to that resolution circulated to all members by the company at the company's expense. Members of all companies, including public companies limited by guarantee (which is the corporate form of most membership associations) are empowered by section 249N of the Corporations Act to give a company notice of a resolution which they propose to move at a general meeting, if they can gather the support of either 5% of the votes that may be cast on the resolution or at least 100 members entitled to vote. Subject to receiving the notice within the required timeframe, the company is then required to provide notice of that resolution to members and if requested by the requisitioning member, circulate statements concerning the resolution to all members. We presume that Mr Stevenson did not utilise this provision due to the fact that the CPA moved its AGM to Singapore and it was difficult for members such as Mr Stevenson to physically attend the meeting.
- It cannot be good governance to promote a method of communication by email when not all shareholders have an email address. Not only does this create a dichotomy of communication, it potentially leaves directors and officers exposed to accessorial liability provisions under section 79 of the Corporations Act for the company's failure to keep email addresses for all of its members on the register.

Corrections to transcript

Please find enclosed the marked up transcript showing the correction which we consider needs to be made to page 25 paragraph 4 of the transcript

Correction of evidence

On review of the transcript we note that we appear to have inadvertently misdescribed a few matters during the giving of evidence that were due to misinterpretation of questions put, and accordingly seek the Committee's indulgence to correct the record:

Page 25 first paragraph

The reference to an amount of \$800,000 being spent by AMP in its year-long campaign to collect email addresses in 2016 was incorrect. In fact the amount of \$800,000 is the amount which AMP estimates it would need to spend to attempt to collect and process the remaining 500,000 email addresses it does not currently hold if the proposed amendment was passed. We refer to page 3 of our original submission which detailed those estimated costs. Of course, any estimated costs would have been based upon actual costs of email collection campaigns which AMP has undertaken in the past.

Page 25 final paragraph

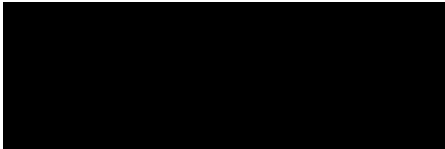
The words '*an unauthorised disclosure of personal information that is likely to result in serious risk or harm*' should read '*an unauthorised disclosure of personal information that is likely to result in serious harm*'.

Page 27 paragraph 7

'That is, having 5,000 votes that are entitled to be cast on the resolution. So if they have 5,000 votes, which is five per cent of the equity of the issued capital of the company....' Should be amended to *'That is, having 5% of the votes that are entitled to be cast on the resolution. So if they have 5% of the votes that can be cast at the AGM.'*

Governance Institute thanks the Senate Committee for the opportunity to provide supplementary answers to questions on notice and we would be pleased to be of further assistance if called upon.

Yours sincerely



Steven Burrell
Chief Executive