

CHAPTER 7

NOTICE OF MEETINGS

Listed companies must give at least 28 days notice of a general meeting

7.1 Section 249HA of the Corporations Law provides that 28 days notice must be given for meetings of listed companies. The amendment to extend the period of notice of a meeting from 14 days to 28 days came into effect from 1 July 1998, and applies to companies that are incorporated in Australia and included in an official list of the Australian Stock Exchange (ASX). It also applies regardless of anything to the contrary in a listed company's constitution.¹ This was the third of the four matters about which the business community had expressed complaint and/or concern to the Government.

7.2 The vast majority of submissions were critical of the 28 days notice requirement.

Arguments in favour of the 28 days notice requirement

The provision will assist institutional and other investors to exercise their votes responsibly

7.3 The Investment & Financial Services Association Ltd (IFSA) told the PJSC that, as a fundamental principle, shareholders should be encouraged to exercise their voting rights responsibly:

A vote is a valuable asset of an investor, which must be managed with the same care and diligence as any other. Ultimately, shareholders' ability to influence management depends on their willingness and ability to exercise their voting rights.²

7.4 At the same time, pressure has increased for institutional investors to exercise their proxy votes. According to IFSA, it is now compulsory for US institutional investors to cast their proxies on their domestic US shares and, consequently, some US institutions are also exercising their proxy votes on their global shareholdings including Australia. Clients are exerting pressure on investment managers, particularly superannuation fund trustees, to exercise votes. IFSA claimed that institutional investors (including foreign institutions) own or manage about 60% of Australian equities yet face serious problems in exercising their votes responsibly.

1 Section 249HA(3).

2 Investment & Financial Services Association Ltd, Submission 34, p 5.

7.5 A principal problem for shareholders, especially foreign investors, in exercising voting rights is the length of time it takes for investors to receive, consider and execute shareholder material. IFSA claimed that delays are caused in a number of ways including:

- Late dispatch and the requirement that the material ‘percolate’ through the ‘custodian chain’, that is, from the registered shareholder custodian to the investment manager with the voting authority;
- The consequential shortening of the period for receiving and dealing with shareholder information due to weekends and holidays;
- The bulk and complexity of the material;
- The time taken for the return of voting instructions to the registered custodian and the required completion of proxy forms giving effect to the voting instructions received from multiple investment managers;
- The need to mail proxy forms so as to reach the registry or company 48 hours before the meeting;
- ‘Log jams’ caused by the voluminous material investment managers receive during the ‘season’ for proxy voting.

7.6 According to IFSA, the delays facing investors in Australia are exacerbated for foreign institutional investors who are a further step removed from this process.³ In response to criticism of the introduction of the 28 days notice period, IFSA stated:

IFSA does not believe that a notice period of 28 days imposes an unreasonable restriction on management and boards of listed companies. It is often argued that pressures caused by the time taken to finalise and then print an annual report, particularly in the height of the reporting season, militate against a 28 days notice period. Overall, on the comparative importance of the interests of shareowners and company management and the balance of convenience on this issue, IFSA submits that the interests of shareowners must prevail. The consequence otherwise is that one of the essential building blocks of best practice in corporate governance, effective and intended participation in the process by shareowners, will be materially impaired for a substantial proportion in value of those owners.⁴

3 Investment & Financial Services Association Ltd, Submission 34, p 6.

4 Investment & Financial Services Association Ltd, Submission 34, p 6.

Practical evidence of the value of the extended period

7.7 The Corporate Governance International Pty Ltd (CGI) told the PJSC that there is already practical evidence of the value of this requirement since the provision came into force. In one case, the additional time enabled institutional shareholders in a listed company:

- To obtain and consider independent advice on the resolutions to be voted on at the meeting;
- To confer with other institutional shareholders in the company;
- To have the matter referred to the ASIC and ASX
 - Where upon the ASIC took up the matter with the company; and
 - The company then made further material disclosure to shareholders via a Chairman's letter;
- To decide and register their proxy vote.⁵

7.8 The company subsequently withdrew certain resolutions previously proposed to be voted on at the meeting. According to CGI, the extended period is a necessary tool to empower institutional and other public investors to protect the investments for which they are responsible.⁶

Recommended amendment to requirement

7.9 The Accounting Bodies gave qualified support for the introduction of the 28 days notice period submitting that the additional time would give members further opportunity to consider resolutions to be decided at a general meeting.⁷ However, the requirement for 28 days notice may cause some companies particular problems in terms of their reporting and printing deadlines. To overcome this, the ASIC should be given authority to grant relief to allow a shorter period "if the requirements of section 249HA are unreasonably burdensome."⁸

5 Corporate Governance International Pty Ltd, Submission 62, p 9.

6 Corporate Governance International Pty Ltd, Submission 62, p 9.

7 Joint Submission by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia, Submission 73, p 3.

8 Joint Submission by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia, Submission 73, p 3.

Arguments against the 28 days notice requirement

No transition period

7.10 The Chartered Institute of Company Secretaries described the effect of the requirement on one major company that has in excess of 300,000 shareholders. That company publicly re-confirmed the date of its AGM unaware that only hours earlier, the Senate had amended the notice period to 28 days:

The logistics and additional expense of bringing such a mailing forward by 7 days must surely not have been appreciated by the legislators. For instance, we understand that negotiations had to be made by that company with the New Zealand Post Office to open on a Sunday.⁹

7.11 GIO Australia Holdings Ltd (GIO) described the difficulty it had in complying with the new requirement at short notice. Publicly listed companies like GIO usually book AGM dates and venues a year in advance because of the difficulty in finding a suitable venue. The change to 28 days meant GIO either had to change dates and venues or split the mail out with the annual report and notice of meeting. In the end, GIO changed the timetable for the production of the Annual Report to accommodate the extra weeks notice.¹⁰

7.12 Concern was also expressed about the effect the change had on financial reporting timetables for the year ended 30 June 1998:

Turnaround times for annual report preparation are restricted (in particular printing requirements) and the loss of a full week with out notice will have cost implications for some listed companies.¹¹

Timetable for annual report and AGMs

7.13 Several companies and professional bodies commented on the timing difficulties that confront companies in complying with a 28 days notice period for general meetings. The Chartered Institute of Company Secretaries advised the PJSC that many companies schedule AGMs and annual report production one or two years in advance. The timetable for producing and distributing the

9 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

10 GIO, Submission 29, p 1. See also Mr JA Sutton, Submission 57, p 1. Mr Sutton noted that the extended notice period is “impracticable” in stressful times, for example, where it may be necessary to arrange a series of meetings and that there would be difficulty in arranging appropriate venues.

11 Henry Walker Group Ltd, Submission 12, p 1.

report prior to the AGM was already tight within the earlier timeframes.¹² The Institute explained that many companies do not have the option of bringing forward the publishing of the annual report by a week to comply with the extended notice period. On the other hand, venue and director availability problems make the option of postponing the AGM unrealistic.¹³ The Australian Institute of Company Directors (AICD) likewise noted that the extended notice period will affect the finalising, printing and distribution of reports to shareholders.¹⁴

7.14 Siddons Ramset Ltd submitted that the 28 days notice period would have the effect of prolonging the period between financial year-end and the holding of an AGM.¹⁵ Similarly, Freehill Hollingdale and Page noted that the new requirement for 28 days notice of meetings for listed companies:

... effectively means that companies required to hold an Annual General Meeting must call the meeting within 4 months of year end rather than four and a half months as was previously the case. Many companies already find it difficult to call their Annual General Meetings within the required time due to the time required to complete the audit (at a time of year where there is intense competition for auditors' time) and prepare the annual report.¹⁶

Possible delays in dividend payments

7.15 The PJSC was warned that the amendment might reverse the emergence of a positive trend in corporate spheres to reduce company timeframes so that shareholders are in a position to consider the company's performance at the AGM:

The Institute is extremely concerned that this amendment is also likely to reverse a very positive trend that was emerging with many listed companies, namely to expedite their meetings cycle so that shareholders are put in the position of being able to consider their company's performance at the earliest opportunity. Unfortunately, in practice this amendment is likely to result in some companies deferring their annual general meetings.¹⁷

12 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2. See also National Can Industries Ltd, Submission 49, p 1.

13 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

14 Australian Institute of Company Directors, Submission 47, p 4.

15 Siddons Ramset Ltd, Submission 65, p 1.

16 Freehill Hollingdale and Page, Submission 40, p 3.

17 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

7.16 A consequence of the deferral of the AGM is that where dividend payments are linked to the holding of an AGM those payments may also be delayed.¹⁸ Ernst & Young stated that a delay in dividend payments was not in the interests of shareholders.¹⁹

Notice of Coles Myer Ltd AGM

7.17 The practical difficulties encountered by companies in meeting the 28 day requirement were demonstrated by the experience of Coles Myer Ltd which was one of the first reporting entities affected by the change to 28 days. Coles Myer submitted that:

The 28-day notice of meeting provision caused great difficulties last year and will continue to cause us problems this year. The problem arises because the extension of the notice period decreases the time the company has to print and mail its annual report to its shareholders.

Last year the increase from 14 days to 28 days resulted in 14 days being taken out of our annual report production and mailing timetable. It was suggested that we could overcome this problem by rescheduling our annual general meeting. We could not do this as large companies such as Coles Myer are required to book annual general meeting venues, such as the Melbourne Concert Hall, up to two years in advance and it is difficult if not impossible to arrange a venue that can accommodate a large meeting at short notice.

We then had to approach the printing industry to determine whether they could produce the required notices of meeting and annual reports within a drastically shortened timeframe. This meant suppliers had to meet this very tight deadline which was contrary to the way we operate and resulted in strained relationships and additional costs.

It was also suggested that we could mail a notice of meeting and follow this with a second mailing of the annual report. Whilst this was an option, it is hard for company executives and the directors to explain to shareholders why they have spent over \$150,000 in additional postage costs.²⁰

7.18 Coles Myer recommended a reduction in the period of notice from 28 days to 21 days. In response to a request from the PJSC for a cost/benefit analysis to support its recommendation for a reduction in the period of notice,

18 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

19 Ernst & Young, Submission 38, p 2.

20 Coles Myer Ltd, Submission 87, p 2.

Coles Myer provided a summary of the costs associated with a 28 day notice period, compared to a 21 day period.²¹

Additional mail costs associated with first class mail of 8 cents per item	\$28,000
Overtime costs or printers	10,000
Overtime costs of mail house (who envelope and prepare for mailing)	10,000
Total direct additional costs	\$48,000

In the event that we fail to have the Annual Report ready to meet the 28 days deadline and so mail Annual Report separately from the Notice of Meeting

Additional mail costs of 45 cents per item	\$157,500
Additional envelope costs of 4 cents per item	14,000
Additional costs of mail house to process 350,000 items	30,000
Further costs	\$201,500
Total cost	\$249,500

Separate mail-out of Annual Report and additional mail-out of more up to date information will be required

7.19 The PJSC was told that a consequence of the extended notice period will be that a number of companies will have to mail their notices of meeting separately from their annual reports, thereby incurring additional costs.²² The additional costs to companies that have no option but to mail the documents separately will be in the order of \$1.00 per shareholder. For companies with large numbers of shareholders such as Telstra this will obviously involve very large sums.²³ The Law Society of Western Australia noted that two mail outs would result in added costs and confusion.²⁴

7.20 GIO estimated that the additional cost to it had it split the normal mailing of the annual report and the notice of meeting into two separate mailings would have been in the order of \$60,000.²⁵

7.21 Arnold Bloch Leibler cautioned that additional mail-outs might be required where information becomes out-dated adding to the expense in

21 Correspondence to the PJSC, 1 September 1999, p 3.

22 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

23 See Mr Peter Jooste QC, Submission 48, p 2 and Australian Listed Companies Association Inc, Submission 66, p 2.

24 The Law Society of Western Australia, Submission 52, p 2.

25 GIO, Submission 29, p 1.

meeting the obligation to afford shareholders sufficient opportunity to consider proposals put to them for consideration.²⁶ Arnold Bloch Leibler stated:

...information mailed to shareholders may well be out of date by the time the relevant meeting is held. The directors may need to dispatch additional material to shareholders prior to the meeting, thereby adding to the costs associated with holding meetings. As this material may be received during the 28-day period, it will be open for shareholders to argue that they have not had a reasonable opportunity to consider the additional material. Delaying the meeting further will involve considerable further expense and will delay the company's ability to take the required action and conduct its business within a reasonable time frame.²⁷

28 days amounts to 5 weeks in practice

7.22 Arnold Bloch Leibler also advised that the actual timeframe is invariably longer than 28 days. Directors need to ensure that there are 28 clear days between the date on which the notice of meeting is dispatched and the date on which the meeting is held, additional days must also be allowed for weekends and public holidays.²⁸ Mr John Fast, a partner with the law firm Arnold Bloch Leibler stated:

What happens practically is that 28 days effectively becomes five weeks. I have been involved in umpteen reconstructions and scheme arrangements and, yes, you have to give 28 days notice, but, being ever cautious and allowing for bits and pieces that can arise, you tend to err on the conservative side, and my experience is that more often than not you tack on a number of days to begin with.²⁹

Three-day rule and ASX Listing Rule requirement

7.23 The PJSC was advised that as a consequence of the application of section 249J(4) of the Corporations Law the 28 days notice becomes effectively 31 days. It was submitted that unless a company's constitution specified another period for receipt of a notice of meeting "receipt is deemed to have occurred three days after the date of postage."³⁰ Section 249J(4), which is referred to as the three-day rule, provides that:

26 Arnold Bloch Leibler, Submission 23, p 7.

27 Arnold Bloch Leibler, Submission 23, p 7.

28 Arnold Bloch Leibler, Submission 23, p 7.

29 Mr John Fast, Committee Hansard, 16 June 1999, p 57.

30 Mr David Cantrick-Brooks, Committee Hansard, 16 June 1999, p 79.

A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

7.24 In addition, ASX Listing Rule 15.1 provides for a 5-day period of review of draft company documentation. The PJSC was told that the change to 28 days extended the timeframe for the notification of meetings, especially when added to the three-day rule and the time the ASX takes to review company documentation:

Mr Cantrick-Brooks-We are talking about listed companies here because that is where most impact occurs. The ASX has a reviewing period-it has five days in which to review documents-so you have to factor that into it as well.

CHAIR-Is that necessary or could that be eliminated in the 28 days.

Mr Cantrick-Brooks-No. The ASX requirement is an ASX listing rule requirement and you need to comply with that. Indeed, there are very good reasons you would want that to occur, because it provides a level of security and satisfaction to shareholders that the thing has been properly reviewed and there has been nothing-

CHAIR-So, effectively, if you have the 28 plus the three plus five, you are really up to 36 to 37 days.

Mr Cantrick-Brooks-Yes. That is not even counting the logistics of getting the printer to get the stuff printed, which a lot of people forget about. From a day-to-day, real life perspective, that is just so critical for us. We are finding ourselves working at the eleventh hour trying to get the stuff out.³¹

Significant commercial opportunities might be missed

7.25 The Law Society of Western Australia warned that the extension might disadvantage companies requiring member approval to a commercial transaction. If conditional agreement is reached, the delay in shareholder approval being given will deny certainty and result in a reluctance to deal with companies in this position.³² Similarly, the Chartered Institute of Company Secretaries submitted that the 28 days notice period could result in companies missing important commercial opportunities.³³

7.26 It was also claimed that the 28 days notice for a general meeting was excessive and might jeopardise capital market raisings or distress situations.³⁴

31 Mr David Cantrick-Brooks, Committee Hansard, 16 June 1999, p 80.

32 The Law Society of Western Australia, Submission 52, p 2.

33 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

34 Porter Western Ltd, Submission 2, p 1; Mr Peter Jooste QC, Submission 48, p 2.

In particular, the 28 day requirement could inhibit capital raising by junior or medium size exploration/mining companies. Lynas Gold NL submitted that:

If a company needs to obtain shareholder approval under Listing Rule 7.1 for a proposed share issue, it may not be able to capture a market opportunity due to the inordinate amount of time required to obtain shareholder approval before the capital is raised. In worst case scenarios, this time lag may lead to the company perishing if capital cannot be raised quickly which would not be in the interests of shareholders.³⁵

7.27 It was suggested therefore that the 28 day period should only apply to listed companies with a defined percentage of overseas shareholders (for example, 40 per cent).³⁶

Amendment not justified

7.28 Several organisations pointed out that there had been no request from the corporate sector for an extension of the notice period or that the 14/21 days notice regime was inadequate.³⁷ The PJSC was told that if problems existed with the previous timeframes other options were available to resolve the situation. If, for example, the complaint is that there are delays in nominees of shareholders receiving and notifying beneficial or overseas shareholders, discussions should have been held between the institutional investors and the principal nominee companies. The mere prolonging of the timetable will not guarantee that such problems will be overcome.³⁸ Similarly, the AICD suggested that instead of legislating to extend notice periods, institutional investor internal procedures could be reviewed and streamlined to allow investors to exercise their voting rights within existing timeframes.³⁹

Reinstatement of 14 day period

7.29 It was recommended to the PJSC that the previous 14 day notice period should be reinstated as a more workable company timeframe.⁴⁰ Given the

35 Lynas Gold NL, Submission 72, p 2. See also Roebuck Resources NL, Submission 69, p 2; Amity Oil NL, Submission 70, p 1; Blakiston & Crabb, Submission 64, p 2; and Mr Rick Crabb, Committee Hansard, 16 August 1999, p 179.

36 Lynas Gold NL, Submission 72, p 2.

37 See for example Australian Institute of Company Directors, Submission 47, p 4; Mr Peter Jooste QC, Submission 48, p 2.

38 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 3. See also Australian Law Reform Commission, Submission 10, p 4.

39 Australian Institute of Company Directors, Submission 47, p 4.

40 Association of Mining and Exploration Companies Inc, Submission 45, p 2. See also Australian Chamber of Commerce and Industry, Submission 59, p 1.

advent and widespread use of electronic communication, the extension of the notice period could not be justified.

Extended period not appropriate where voting issues are subject to changing market conditions

7.30 It was argued that in certain circumstances, the extended notice period is too long, particularly where shareholders are asked to vote on matters that are subject to change or are affected by movements in market conditions. According to Allen Allen & Hemsley, shorter time periods are more appropriate in those circumstances to avoid the dissemination of information that may rapidly become misleading as a result of those changes.⁴¹ Similarly, GIO noted that after 28 days, the issues raised in the Annual Report lose their ‘immediacy’.⁴²

7.31 Freehill Hollingdale and Page highlighted the fact that the amendment may have the opposite effect to that which was intended:

This amendment appears to have been intended to *improve* the notice given to shareholders of general meetings. However, it may in fact *reduce* the quality of information provided to shareholders with a notice meeting, because that information will be at least 4 weeks (and up to, perhaps, 6 weeks allowing time for meeting documentation to be drafted and distributed to shareholders) out of date by the time the vote is taken.⁴³

Inconsistency in timetable

7.32 The West Australia Joint Legislative Review Committee of the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants and the Chartered Institute of Company Secretaries opposed the extended notice period on several grounds, including that it results in inconsistency between the timetable for reporting to members (21 days) and the notice period (now 28 days). The Review Committee commented that the annual report is as important as the notice of the meeting and noted that:

Apart from the significant mailing cost in this transition year, in the future it is expected that companies will report and give notice together. That is, all end of year activities will be advanced by 2 weeks over what they have been to date. This can only result in

41 Allen Allen & Hemsley, Submission 9, pp 3-4; See also Caltex Australia Ltd, Submission 30, p 3; Mr Peter Jooste QC, Submission 48, p 2.

42 GIO, Submission 29, p 2.

43 Freehill Hollingdale and Page, Submission 40, p 3.

greater costs and a speed of process that could contribute to a greater risk of error for no discernible advantage.⁴⁴

Advent of technology

7.33 Several submissions argued that in these days of advanced technology, longer notice periods are unnecessary given the speed and ease of electronic communication.⁴⁵ It was suggested that the notice periods should be reduced, if anything, given the availability of fax and e-mail facilities.⁴⁶ The PJSC was told that the advent and widespread use of electronic communication “permits almost instantaneous communication with shareholders Australia wide and globally. As such, a 28 day notice period is not justified.”⁴⁷

7.34 Preuss Feinauer and Associates were of the view that the lengthening of the notice period was contrary to the flow of modern technology. Preuss Feinauer noted that the argument in favour of the change to 28 days is that it gives all participants a greater opportunity to consider proposals being put to members. In reality, few members attend meetings and the board has usually pre-arranged the votes for passing the necessary resolutions and the 28 day notice is a nominal time period only. In addition, the 28 day period is extended by other time periods such as obtaining consent from the ASX or ASIC or because of printing or mailing issues. In any event, the capacity of members to appoint proxies covers situations where members who wish to attend the meeting are unable to do so, because of the “short notice” of 21 days.⁴⁸

7.35 As the Law now makes provision for lodgement of proxy forms by fax or e-mail, the ASX submitted that it was not convinced a 28 days notice period is necessary. According to the ASX, this facility should assist in concerns expressed on behalf of overseas investors.⁴⁹

Implications for the ASX’s Listing Rules

7.36 In its submission to the PJSC, the ASX stated that the introduction of the 28 day requirement had caused practical problems in terms of the requirements for companies to hold meetings under the Listing Rules.⁵⁰ The

44 West Australia Joint Legislative Review Committee of the Australian Society of CPA, the Institute of Chartered Accountants and the Chartered Institute of Company Secretaries, Submission 18, p 4.

45 Mr John Wilkin, Submission 21, p 7. See also Australian Institute of Company Directors, Submission 47, p 4.

46 See for example Bristile Ltd, Submission 26, p 1.

47 Association of Mining and Exploration Companies Inc, Submission 45, p 2.

48 Preuss Feinauer and Associates, Submission 27, pp 1-2.

49 Australian Stock Exchange, Submission 44, p 7.

50 Australian Stock Exchange, Submission 44, p 7.

ASX submitted that 28 days notice should not apply to meetings required by the Listing Rules. Of the Listing Rules which require meetings, some require a special resolution but the majority require an ordinary resolution. Many of the Listing Rules requiring meetings are triggered by proposed commercial transactions that have a limited window of opportunity. Therefore, entities will apply for a waiver of the Listing Rules and the ASX will either do this (and prevent shareholders from voting on it) or refuse (and perhaps frustrate transactions).

7.37 The ASX recommended that if the 28 days notice is retained, it should not apply to meetings required by the Listing Rules. It recommended that the 28 days notice could be limited to meetings required by the Corporations Law.⁵¹

21 days is sufficient

7.38 Reflecting the views of the majority of submissions critical of the change to 28 days, GIO argued that 21 days is sufficient notice period:

21 days is regarded as ample time by all shareholders to come to grips with the issues being raised at our Annual General Meeting. After 28 days, the Annual Report and the issues raised in it have lost their immediacy.⁵²

7.39 The Law Society of Western Australia submitted that, in all the circumstances, the 21 day notice period is sufficient. Under the Listing Rules of the ASX, companies must obtain shareholders' approval to pursue certain commercial transactions. Preparation of the notice of meeting and the submission to the ASX for approval, printing and posting takes one to three weeks in addition to the notice period. The Law Society supported the extension of the notice period for ordinary resolutions to 21 days because it was necessary to permit the receipt and consideration of meeting material and the return of proxies. However, it did not believe that the further increase to 28 days was necessary.⁵³

7.40 Submissions to the PJSC made reference to other grounds for opposing the 28 days notice:

- The ASIC is powerless to grant companies relief;⁵⁴

51 Australian Stock Exchange, Submission 44, pp 6-7.

52 GIO, Submission 29, p 2.

53 The Law Society of Western Australia, Submission 52, p 2.

54 Chartered Institute of Company Secretaries in Australia Ltd, Submission 1, p 2.

- Listed companies should not be treated differently to or discriminated against other companies in terms of notice periods;⁵⁵
- Only Germany, Austria and Portugal have such lengthy notice periods.⁵⁶ By contrast, the 21 day notice period conforms with the notice period in the UK and Canada, and is longer than the 10 day minimum notice period in the US and the 14 days required in New Zealand;⁵⁷
- The amendment was made without a regulation impact statement (RIS).⁵⁸

Conclusions

7.41 In its March 1998 *Report on the Company Law Review Bill 1997*, the PJSC did not support calls for extending the period of notice from 21 days to 28 days. The PJSC had considerable sympathy for those concerned that the 14 days was too short but was not convinced that the doubling to 28 days was either justified, necessary or in the interests of the company. It recommended that the clause in the Bill requiring a minimum 21 days notice of meetings should proceed.⁵⁹

7.42 The evidence put to the PJSC during its inquiry has reinforced its earlier view and recommendation. The 28 days notice has placed greater demands on directors and company management and has increased costs without any measurable corresponding benefit to shareholders. Moreover, the evidence that companies have been forced to the major expense and disruption of two mailings for the purpose of an AGM gives rise to concern.

7.43 In the view of the PJSC the doubling of the period of notice from 14 to 28 days has added considerably to costs and inefficiency in company meeting cycles. It was argued that the extension of the period of notice ran counter to the flow of modern technology which has the capacity to shorten periods of time as opposed to lengthening them. The PJSC believes that increased use of electronic communication provides a more appropriate solution than extending the notice period for meetings.

7.44 As the PJSC noted earlier, the 28 days is a minimum nominal period which can be extended by other time periods such as the three-day rule and obtaining consent from the ASX. The PJSC is mindful that delays to general meetings can cause inefficiencies in capital raising particular for small listed

55 Suncorp-Metway Ltd, Submission 17, p 2.

56 Australian Institute of Company Directors, Submission 47, p 4.

57 Securities Institute, Submission 75, p 1.

58 Australian Chamber of Commerce and Industry, Submission 59, pp 1-2.

59 Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on the Company Law Review Bill 1997*, March 1998, pp 12-14, p 18.

companies and in approvals for share issues and schemes of arrangements. The PJSC agrees with the Law Society of Western Australia that the 28 days notice creates a competitive disadvantage for companies requiring shareholder approval of a commercial transaction. In addition, considerable changes would need to be made to the ASX Listing Rules and timeframes.

7.45 The PJSC is also concerned that the Law differentiates between listed companies and unlisted companies for the purpose of notice of meetings and no strong argument was made to the PJSC for this distinction. As several witnesses told the PJSC, retention of the 28 days notice period would mean that members of listed companies may be disadvantaged by out of date information or positions that were overtaken by the lapse of over a month or longer. In these circumstances where members are required to vote on matters which are subject to changes in market conditions, information and director's recommendations could be out of date, inaccurate or misleading as a result of changed circumstances. The PJSC believes that the issue of the timeliness and quality of information supplied to members is critical to a company's ability to conduct its affairs. Any action that can delay the holding of a meeting is not in the best interests of the company or its shareholders.

Recommendation

7.46 The PJSC recommends that the 28 day period of notice for meetings of listed companies should be reduced to 21 days.