

LABOR MEMBERS AND SENATORS MINORITY REPORT

Chapter 2: Proportional Voting for Directors

Conclusions:

Labor Members and Senators believe that the current method of election of company directors may be open to unfair manipulation. We believe that a range of options of election methods should be available to companies. These options should be prepared in consultation with the ASX and ASIC.

Individual companies can then nominate which election method they prefer.

Recommendations:

Labor Members and Senators support the Committee recommendations.

Chapter 3: Environmental Reporting

Conclusions:

Labor Members and Senators welcome the debate surrounding this measure. Despite the predictions in many of the submissions that the clause was unworkable, industry and regulators, in consultation with stakeholders, have been able to reach a degree of consensus on compliance with this measure.

Recommendations:

Labor Members and Senators support the retention of section s.299(1)(f) of the Corporations Law.

Chapter 4: Disclosure of Information Filed Overseas

Conclusions:

Labor Members and Senators believe that there are many benefits to investors if this provision is retained. The most compelling view expressed was of the benefits of globalisation and harmonisation with international markets. The ASX will face increased competition in the Australian market from overseas competitors in the near future. Inevitably alliances will be formed with overseas exchanges, which will lead to standard documentation in all markets.

Recommendations:

Labor Members and Senators support the retention of section s.323 DA of the Corporations Law.

Chapter 5: Reporting of Proceedings

Conclusions:

Labor Members and Senators believe that the arguments put forward on transparency, corporate governance, protection of shareholders interests and the harmonisation of international standards were compelling.

Recommendation:

Labor Members and Senators support the principle that companies should be obliged to report any significant proceedings instituted against the company for any material breach by the company of the Corporations Law or trade practices law. We therefore do not support the Committee's recommendation.

Chapter 7: Notice of Meetings

Conclusions:

Labor Members and Senators believe that adequate time is necessary to allow effective participation by shareholders. As Australia's market has matured, it is estimated that 60% of Australian equities are owned or managed by institutional investors. This changing structure has seen the

investor community require a longer period to appropriately consider the information provided by management to shareholders. While acknowledging the transitional difficulties experienced last year by many companies following the amendments to the Company Law Review Act, the benefits in encouraging participation of shareholders or their representatives are substantial.

Recommendation:

Labor Members and Senators support the retention of 28 days notice.

Chapter 8: Disclosure of Proxy Voting

Conclusion:

One of the most disappointing features of our corporate culture is the low level of participation by institutional investors. This measure is a wake-up call to encourage greater participation in corporate affairs. The current low level of proxy voting – averaging only 32% - is of concern.

Recommendation:

Labor Members and Senators support the retention of

- (i) section 251 AA (1) (a)
- (ii) section 250 J (1A)
- (iii) section 251 AA (1) (b) (iii)
- (iv) support the amendment to correct drafting oversight, and;
- (v) support the final recommendation.

Chapter 9: Corporate Governance Board

Conclusion:

Labor Members and Senators believe that good corporate governance increases shareholder value. International studies show a clear link between corporate governance and increased shareholder value.

Overseas experience demonstrates that there are many models of corporate governance. An examination of the most appropriate model for Australia is essential before Labor Members and Senators could support mandating such a measure.

While Australia has comparatively good corporate governance practices, significant improvement is required.

Uptake of the IFSA Blue Book guidelines on corporate governance is disappointingly low, despite many years to adopt the measures. We believe that the Committee should monitor levels of compliance with corporate governance principles, and if a significant increase in the levels of voluntary compliance is not achieved over the next two years, it may be necessary to revisit this issue.

Recommendation:

Labor Members and Senators support the Committee's recommendations.

Chapter 10: Audit Committee

Conclusions:

Labor Members and Senators believe that audit committees provide an integral element of good corporate governance. Many listed companies have opted for such measures.

We believe that the Committee should monitor the levels of compliance with this principle and if significant increase in the levels of voluntary compliance is not achieved over the next two years, it may be necessary to revisit this issue.

Recommendation:

Labor Members and Senators support the Committee's recommendations.

Chapter 11: Obligation to Report Suspicions of Fraud

Conclusions:

Labor Members and Senators believe that this increased level of transparency within a corporation would enhance the role of an auditor and an audit committee. This would reduce the likelihood of mistakes and excesses of the 1980s being repeated.

Recommendation:

Labor Members and Senators support the principle that directors and executive officers of a company be obliged to report any reasonable suspicion of serious fraud or improper conduct to the auditor.

Chapter 12: Director's Power to call a Meeting**Conclusion:**

Labor Members and Senators believe that this is an important element of good corporate governance practices. It provides a balance to a majority position on a board without necessarily factionalising a board. We believe that it is unsatisfactory that the only option available to dissenting directors is to resign from a board.

This may lead to a contentious issue not being brought to the attention of shareholders.

No compelling evidence was provided to the Committee of this process being abused.

Recommendation:

Labor Members and Senators support the retention of section 249 CA of the Corporations Law.

Chapter 13: Receipt of Proxy Appointments**Recommendation:**

Labor Members and Senators welcome the belated support for section 250 BA of the Corporations Law by Government Members of the Committee and support the Committee's recommendations.

Chapter 14: Director's Remuneration

Conclusions:

Labor Members and Senators welcomed the overwhelming support this measure received, both from those who made formal submissions and members of the wider community.

We support the review of this issue by the Australian Accounting Standards Board (AASB) and look forward to the release of their draft standard.

We believe that it is hasty for the Parliament to revisit this matter while this issue is pending determination by the AASB.

Labor Members and Senators believe that this issue should be re-assessed by the committee after the release of the proposed standard.

Recommendation:

Labor Members and Senators support the retention of section 300A of the Corporations Law pending the release of the AASB's draft standard.

Chapter 15: Requisitioning a General Meeting

Conclusion:

Labor Members and Senators believe that there are unintended consequences arising from the changes made by the Company Law Review Act 1998.

The changes mean that companies and the majority of shareholders bear significant costs when an extraordinary general meeting is requisitioned.

Labor believes that this issue should be revisited by Parliament with a view to restoring the balance between the majority of shareholders and an active minority. Labor is actively canvassing options with interested parties and will release its position by the end of November.

Recommendation:

Labor Members and Senators recognise the need for change to restore an appropriate balance between promoting company efficiency and maintaining corporate governance concerns of minority shareholders. We do not support, however, the Committee's proposed amendment. This issue needs to be looked at further in the near future.

Chapter 16: Other Matters**Recommendation:**

Labor Members and Senators support the conclusions of the Committee.

Senator Stephen Conroy

Mr Bob Sercombe MP

Mr Kevin Rudd MP

Senator Barney Cooney