

Supplied with Compliments
by the Senate Table Office

THE PARLIAMENTARY JOINT COMMITTEE

ON

CORPORATIONS AND FINANCIAL SERVICES REPORT

***INQUIRY INTO THE EXPOSURE DRAFT OF THE
CORPORATIONS AMENDMENT BILL (NO. 2) 2005 –
JUNE 2005***

THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES REPORT *INQUIRY INTO THE EXPOSURE DRAFT OF THE CORPORATIONS AMENDMENT BILL (NO. 2) 2005* – JUNE 2005

GOVERNMENT RESPONSE

Recommendation	Response
<p>Recommendation 1</p> <p>The Committee recommends that the Bill be amended to insert a section which provides that, for mutuals, the threshold for calling a general meeting should be 1 per cent of the total number of votes able to be cast at the general meeting.</p>	<p>The Government rejects this recommendation.</p> <p>The arguments that support removal of the 100 member rule and retention of a 5 per cent threshold for calling an extraordinary general meeting of a general company also apply for mutual companies.</p> <p>The introduction of a separate regime for mutual companies would increase regulatory complexity.</p> <p>The impact of the reforms will be reviewed in three years, with a view to assessing their impact on shareholder participation including for members of mutual companies.</p>
<p>Recommendation 2</p> <p>The Committee recommends that the Bill be amended to remove the 100 member rule for managed investment funds.</p>	<p>The Government accepts this recommendation.</p> <p>There should be a consistent threshold for the calling of extraordinary general meetings of managed investment funds and companies.</p>

<p>Recommendation 3</p> <p>The Committee recommends that item 3 of Schedule 1 of the Bill (lowering the threshold for proposing members' resolutions from 100 to 20) be omitted.</p>	<p>The Government accepts this recommendation.</p> <p>The reforms will be reviewed in three years, with a view to assessing their impact on shareholder participation including through members' resolutions and statements.</p>
<p>Recommendation 4</p> <p>The Committee recommends that, in the event that recommendation 2 is not enacted, the Parliamentary Joint Committee on Corporations and Financial Services conduct an inquiry into the operation of s.249N after the proposed amendment has been in operation for one year.</p>	<p>Refer to Recommendation 3</p>
<p>Recommendation 5</p> <p>The Committee recommends that the proposed Bill be amended to provide that members' statements proposed by 20 or more, but fewer than 100, shareholders should be:</p> <ul style="list-style-type: none"> • no more than one page in length; and • received by the company by a suitable date, in order to enable distribution with the package of AGM materials. 	<p>Refer to Recommendation 3</p>

<p>Recommendation 6</p> <p>The Committee recommends that the Treasurer review the protection provided to the Australian Stock Exchange under s.1100B of the <i>Corporations Act 2001</i>.</p>	<p>The Government accepts this recommendation.</p>
<p>Recommendation 7</p> <p>The Committee recommends that the Treasurer investigate direct voting, how its greater use might be encouraged, and the full implications of its widespread use.</p>	<p>The Government accepts this recommendation.</p> <p>In 2004, the Government introduced amendments to facilitate electronic proxy voting as part of the CLERP 9 reforms. The reforms also permitted body corporates to act as proxies to facilitate greater shareholder participation by allowing representative bodies or corporations to operate as proxy collection services.</p> <p>Amendments contained in this Bill to facilitate electronic circulation of resolutions and statements by members will further Australia's already progressive approach to electronic communication with shareholders.</p>

LABOR MINORITY REPORT

Recommendation	Response
<p>Minority Recommendation 1:</p> <p>Labor endorses the removal of the 100 member rule.</p> <p>Regarding operation of the 5 per cent rule, Labor recommends a cap allowing 1500 members to support the calling of an extraordinary general meeting of the company.</p> <p>Labor recommends that each of the 1500 members individually hold, at a minimum, a marketable parcel of 100 shares.</p>	<p>The Government rejects this recommendation.</p> <p>A 5 per cent threshold is equal to or lower than the thresholds in other comparable jurisdictions.</p> <p>The proposal for a cap of 1500 members fails to recognise the substantial size differences between companies.</p> <p>The proposal for an economic interest test would introduce complexity and cost as companies would be required to assess the value of shares held.</p>
<p>Minority Recommendation 2</p> <p>Labor endorses the removal of the 100 member rule for mutual organisations.</p> <p>Regarding operation of the 5 per cent rule for one member one vote companies, Labor recommends a cap allowing 5,000 members to support the calling of an extraordinary general meeting of the company.</p>	<p>The Government rejects this recommendation.</p> <p>The arguments that support removal of the 100 member rule and retention of a five per cent threshold for calling an extraordinary general meeting of a general company also apply for mutual companies.</p> <p>The introduction of a separate regime for mutual companies would increase regulatory complexity.</p> <p>The impact of the reforms will be reviewed in three years, with a view to assessing their impact on shareholder participation including for members of mutual companies.</p>

<p>Minority Recommendation 3:</p> <p>The Parliamentary Joint Committee on Corporations and Financial Services should review the impact of changes under the Corporations Amendment Bill (No.2) 2005, two years from the effective date of legislation introducing the changes.</p>	<p>This is a matter for the Parliamentary Joint Committee on Corporations and Financial Services.</p>
<p>Minority Recommendation 4:</p> <p>That the Corporations Act be amended so it is clear that companies may not delay the inclusion of a members' resolution on any grounds other than those described by s.249 O(5)(a) and (b) of the corporations law.</p>	<p>The Government rejects this recommendation.</p> <p>It is important that resolutions be clear, unambiguous and worded in a manner that achieves the intended legal effect if passed. Many resolutions propose amendments to the company constitution which is a critical document.</p> <p>A more prescriptive approach in this area would increase complexity and the cost of business regulation.</p>