



Government & Regulatory Affairs  
Level 22, 100 Queen Street  
Melbourne Vic 3000

Phone +61 3 9273 6323  
Fax +61 3 9273 4899  
www.anz.com

31 March 2005

The Secretary  
Parliamentary Joint Committee on  
Corporations and Financial Services  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Australia

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Sir/Madam

**Re: Inquiry into the Exposure Draft of Corporations Amendment Bill  
(No.2) 2005**

ANZ appreciates the opportunity to provide comments to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the draft Corporations Amendment Bill (No.2) 2005.

In response to the issues raised by the Terms of Reference, ANZ provides with this letter a submission to the Treasury Department on the Draft Bill which was lodged on 31 March 2005.

ANZ supports the proposal to remove the 100 member rule for requisitioning special general meetings but has concerns about the introduction of a 20 member rule for adding a resolution to a general meeting and requiring the distribution of a members' statement. The submission to Treasury outlines some alternative approaches for the latter proposals which draw on the experience in the United Kingdom and the United States.

Please contact me on 03 9273 6323 if you would like to discuss ANZ's submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jane Nash', written in a cursive style.

Jane Nash  
Head of Government and Regulatory Affairs



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General Manager  
Corporations and Financial Service Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [cab2005@treasury.gov.au](mailto:cab2005@treasury.gov.au)

Dear Sir/Madam

**Re: Corporate Governance Reforms – Exposure Draft of Corporations  
Amendment Bill (No.2) 2005**

Australia and New Zealand Banking Group Limited ('ANZ') appreciates the opportunity to comment on the Exposure Draft of the Corporations Amendment Bill (No.2) 2005. ANZ supports the Government's objective to retain effective mechanisms for shareholders to participate in company activities while managing the associated costs these mechanisms can pose to the company and, indirectly, its shareholders. ANZ believes that, for the most part, the Draft Bill achieves this objective.

This submission will address each amendment contained in the Draft Bill and provide ANZ's comments on the need for the amendment and the likely impact of the amendment on ANZ and shareholder participation generally. The submission will also, where relevant, suggest alternative approaches for the Draft Bill, which we believe will better achieve the Government's objective.

In summary, ANZ:

- supports the proposal to remove the '100 member rule' which currently requires a company to hold a special general meeting at the request of only 100 members (proposed section 249D(1));
- has some concerns about the proposal to reduce one limb of the current member threshold for requiring a company to place a resolution on the agenda of a scheduled company meeting from 100 members to only 20 members. These concerns are also relevant for the proposal to reduce the member threshold for requiring a company to distribute a members' statement (proposed subsections 249N(1)(b) and 249P(2)(b)). ANZ will suggest some alternative approaches for this amendment based on the experience in the United Kingdom and the United States;
- supports the provisions requiring companies to send members' statements and members' resolutions by electronic means where the

member has opted to receive notices of general meetings in this way (proposed sections 249O and 249P);

- supports the amendment requiring appointed proxies to carry out the voting intentions of each member they represent (proposed subsections 250A(4) and (5));
- supports the amendment to the requirement to disclose proxy votes (subsection 250J(1A)); and
- supports the removal of the requirement for companies to disclose information reported to overseas exchanges (proposed section 323DA).

### **Proposed section 249D(1) – Removal of ‘100 member rule’**

ANZ supports this amendment.

In practical terms, the current provision requiring a company to hold a special general meeting at the request of only 100 members can give a small group of minority shareholders disproportionate influence over the conduct of the company. To illustrate this point, as at 11 February 2005, ANZ had 253,163 shareholders representing 1,824,195,418 issued shares. Under the existing rule, 0.04% of ANZ shareholders, collectively holding a minimum of 0.000055% of issued share capital, are able to requisition a special general meeting.

ANZ agrees with the Government’s view that it is inequitable to allow such a small minority of shareholders to impose the substantial cost of a general meeting on a company, and indirectly, other shareholders. The table below summarises the approximate costs to ANZ of holding an extraordinary general meeting.

<b>Item</b>	<b>Estimated cost</b>
Venue (including venue hire, technical services, food and beverage and communications)	\$60,200
Production costs (including autocue, web casting, telephone conferencing, security)	\$230,300
Contract costs	\$55,000
Proxy solicitation	\$18,000
Printing and stationery	\$18,000
Postage and couriers	\$320,000
<b>Total approximate costs</b>	<b>\$701,500</b>

In addition, there are other costs that are difficult to quantify, including the cost of management and Board time for planning, producing and attending the meeting, as well as professional advisory costs incurred to determine ANZ’s responsibilities if the meeting and resolutions were requisitioned by shareholders.

The proposed provision requiring a minimum of five per cent of voting shares to requisition a general meeting reflects a more appropriate balance between the rights of different shareholders. As at 11 February 2005, this minimum threshold would require shareholders to collectively hold a minimum of 91,209,771 shares to requisition a meeting.

## **Proposed subsections 249N(1)(b) and 249P(2)(b) – introduction of '20 member rule' for resolutions and members' statements**

ANZ has some concerns about the proposed provisions reducing the number of members required to:

- put resolutions at general meetings and
- compel a company to distribute a members' statement to all shareholders.

The proposed amendments reduce the member threshold for these matters from 100 members to 20 members.

ANZ supports reforms that seek to promote shareholder participation and democracy but believes the proposed amendments may lead to frivolous and unnecessary resolutions and members' statements being put to shareholders, which are not in the best interests of the wider shareholder base.

In particular, the proposed '20 member rule' could be abused by interest groups seeking to advertise a cause or special interest by compelling a company to issue a 1000 word members' statement to its shareholders. Companies with a large shareholder base such as ANZ would be particularly susceptible to this form of abuse.

### *Effect of proposed amendment*

Based on the number of ANZ shareholders and issued ANZ shares as at 11 February 2005, the proposed amendments would mean 0.0079% of ANZ shareholders, representing 0.0000011% of issued share capital, could require ANZ to:

- put a resolution to shareholders (including to deliver a 1,000 word notice of the resolution) and/or
- deliver to all shareholders a members' statement about a resolution or other matter properly considered at a general meeting.

The only ground upon which ANZ could refuse the resolution or member statement would be that the resolution or member statement is defamatory.

ANZ believes in the absence of further controls over the circumstances in which a company can be required to include a resolution or distribute a members' statement, the proposed amendments pose a substantial risk of irrelevant resolutions and members' statements.

Shareholder activism is a relatively new phenomenon in Australia. It has been an issue for longer in other countries and it is useful to consider how those countries have addressed the risk of abuse of process and sought balance to ensure resolutions and statements brought by minority shareholders remain appropriate and relevant.

### *Some alternative approaches*

The *Companies Act 1985* (UK) provides that a minimum of 100 shareholders is required to put a resolution to shareholders. In addition, the Act contains a further restriction requiring that each of those 100 shareholders must own,

on average, a minimum of 100 shares each. This has the effect of increasing the total shareholding represented by the group of shareholders putting a resolution to the company and therefore ensuring the resolution is broadly consistent with the interests of the wider shareholder base.

Under the Rule 14a-8 no-action process of the US Securities and Exchange Commission (No-Action Rule), the threshold for putting forward a resolution is not based around a minimum number of shareholders, but on the number of shares represented by those requesting the resolution. The No-Action Rule requires the shareholder(s) putting the resolution to hold shares of at least US\$2,000 in market value, or 1% of the issued share capital of the company. These shares must have been held continuously for at least one year prior to a resolution being put forward. This measure addresses the risk that activists only hold shares in companies for the very short-term for the sole reason of putting resolutions to the general meeting and publicising their cause.

In addition, the US No-Action rule sets out 13 substantive bases for companies to exclude shareholder resolutions, including where:

- the proposal relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business; and
- the proposal deals with a matter relating to the company's ordinary business operations.

ANZ recommends the proposed amendments to subsections 249N(1)(b) and 249P(2)(b) be reviewed to incorporate some measures to reduce the risk of these processes being abused by small, unrepresentative shareholder segments. ANZ supports a threshold that is based at least partly on a minimum shareholding (eg. 1% of all issued share capital) rather than solely on the number of shareholders. We also believe that consideration should be given for there to be a minimum period of holding such shares.

ANZ also believes that a company should be able to reject resolutions or statements that are clearly not consistent with the interests of the wider shareholder base. For example, a company should be able to reject a request for a resolution or members' statement where the proposed resolution or members' statement:

- is defamatory;
- is not significantly related to the company's business;
- relates to the company's ordinary business operations and is devoid of policy issues; or
- relates to the redress of a personal claim or grievance against the company or any other person or otherwise furthers a personal interest.

ANZ would be happy to be involved in any discussions about these alternative approaches.

**Proposed sections 249O and 249P – electronic circulation of members’ resolutions and members’ statements**

ANZ supports this amendment.

**Proposed subsections 250A(4) and (5) - appointed proxies to carry out the voting intentions of each member they represent**

ANZ supports this amendment.

**Proposed repeal of section 250J(1A) – disclosure of proxy voting**

ANZ supports this amendment.

**Proposed repeal of section 323DA – disclosure of information filed overseas**

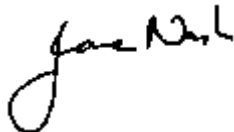
ANZ supports this amendment.

**Concluding Comments**

ANZ appreciates the opportunity to provide its comments on the Draft Bill and would welcome the opportunity to discuss this submission further. In particular ANZ would be pleased to be involved in any discussion about alternatives to the introduction of a ‘20 member rule’, set out in proposed sections 249N and 249P.

Please call me on 03 9273-6323 to discuss any aspect of this submission.

Your sincerely

A handwritten signature in black ink, appearing to read 'Jane Nash', written in a cursive style.

Jane Nash  
Head of Government and Regulatory Affairs