Australian Shareholders' Association Ltd

ABN 40 000 625 669

1 April 2005

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
Canberra ACT 2600

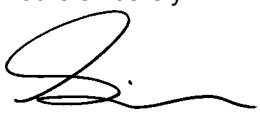
By email: corporations.joint@aph.gov.au

Dear Mr Marinac

ASA Submission on Corporations Amendment Bill (No. 2) 2005

We understand that you are seeking written submissions from interested parties on Corporations Amendment Bill (No. 2) 2005. We have tendered a joint submission to Treasury and the Committee on the subject of proposed amendments to ss 249D and 249N of the Corporations Act requesting a special general meeting and placing resolutions on the agenda at company meetings with fellow industry participants*. We attach our individual contribution on the key amendments of the Bill.

Yours sincerely



Stuart Wilson
Chief Executive Officer

*Chartered Secretaries of Australia, Investment & Financial Services Association Securities Institute of Australia, Australasian Investor Relations Association, Business Council of Australia and Australian Employee Ownership Association.

Level 7, North Tower, 1 – 5 Railway Street Chatswood NSW 2067. PO Box 519 Chatswood NSW 2057
Telephone: 1300 368 448, (02) 9411 1505 Fax (02) 9411 6663 Web: www.asa.asn.au Email: share@asa.asn.au

AUSTRALIAN SHAREHOLDERS' ASSOCIATION SUBMISSION
Corporations Amendment Bill (No. 2) 2005

In summary ASA supports the proposed amendments apart from the proposed reduction to the threshold allowing members' resolutions to be brought to Annual General Meetings already scheduled (Section 249N) and for distribution of members' statements by the company along with the notice of meetings (Section 249P) from 100 to 20 and Section 323DA. The proposed amendments are addressed below.

Remove the 100 member rule from section 249D of the Corporations Act

On balance, the ASA supports the proposal in the Corporations Amendment Bill (No 2) 2005 for removing the 100-member rule in section 249D of the *Corporations Act* for calling a special general meeting and maintaining the requirement for five per cent of the votes that may be cast at the general meeting. The proposal to maintain this simple five per cent rule deals with the existence of very large registers for some listed companies without what some may see as the complications of tiered solutions recommended in the past, such as the square root rule.

Requiring five per cent of total voting shares to requisition a special general meeting is a reasonable balance of the rights of shareholders to have matters of general shareholder interest addressed with the importance of allowing directors to effectively run the company.

In its forty-year history, the Australian Shareholders' Association has not used the powers under this section. It has only ventured to call for a special general meeting in one case, using the five per cent rule, which did not come to fruition as the director whose resignation was sought stepped down. Under this amendment the ASA would seek support of institutions or major investors in order to collect signatures representing five per cent of the register for issues deemed sufficiently urgent to require a special meeting to address them.

Given final support for the proposed resolutions was minimal, meetings that have been called under this section (Gunns, Wesfarmers) have not appeared to balance the cost of an extra meeting (financial and diversion of management and board attention) and best interests of the company and shareholders.

We note the five per cent ownership rule does not fit well with any mutual organisations with a large membership base. Organisations such as the NRMA or Credit Unions will require five percent of member numbers to call and special general meeting under this amendment eg if NRMA has two million members, one hundred thousand signatures will be required. The logistics of signature collection will is clearly prohibitive.

Reduce the threshold allowing members' resolutions to be brought to Annual General Meetings already scheduled (Section 249N); and
Reduce the threshold for distribution of members' statements by the company along with the notice of meetings (Section 249P)

We believe that the proposed amendment to section 249N does not achieve the stated aim of the government to encourage valuable debate within the company. Likewise, these comments apply equally to managed investments scheme proceedings.

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The annual general meeting is often the only opportunity for shareholders to have direct contact with directors of their company. While shareholders are responsible the appointment of directors, the meeting is the only opportunity for dialogue. Despite the low proportion of shareholders physically in attendance, the AGM gives directors an insight into some of the areas of concern for small investors. The reporting of meetings on company web sites and in the media give shareholders who do not attend the opportunity to assess the issues and their directors' responses. Retail shareholders perceive that directors are more able to take shareholders' concerns into account if there has been some public interaction with shareholders.

The ASA Exposure Draft of the Policy Statement "Shareholders Expect" covers meetings with shareholders in section six:

> ***6. Meetings with shareholders***
>
> ***6.1 Conduct of meetings***
>
> *Shareholders expect general meetings to be conducted in a way that permits reasonable expression of their views on the matters to be decided and, in the case of the annual general meeting, on the performance of the company. They expect the chair to act in a presidential style – not dictatorially, nor defensively in protection of the board or other stakeholder groups, nor in a confrontational way. Meetings of shareholders are not public meetings.*
>
> *Management of business needs to recognise that sometimes the length of a meeting is indeterminate. Consequently, where voting is to be on a poll the poll should be opened at the commencement of the meeting so that shareholders who wish to depart before the formal vote can participate. Moreover, regardless of whether a poll is to be conducted, shareholders expect that all voting should initially be on a show of hands so that the strength of votes by individual shareholders is evident.*
>
> *Shareholders expect to be able to discuss each agenda item separately. It is inappropriate for a chair to take all questions before the first resolution, and to prevent the raising of issues on subsequent resolutions.*

We hold concerns about the proposed lowering of the threshold from 100 to 20 for the number of members needed to add a resolution to the agenda of an annual general meeting and/or to compel a company to distribute a member statement to its shareholders. We believe that the reduction of the threshold could see a range of issues outside those of interest to the general shareholder being included on the agendas of general meetings. Typically the agenda of an annual general meeting already addresses some of the broad areas of interest and will include consideration of the financial accounts, the remuneration report and the election/re-election of directors. We note that the requirement to distribute a member statement is limited to a statement about a resolution proposed to be moved at the general meeting or any other matter that may be properly considered at a general meeting.

The risk of lowering of the threshold from 100 to 20 is that items that would not gain the support of 100 members would only serve to make AGMs larger, longer and less focused, to the detriment of members and companies may be added to the meeting agenda. A further concern is the members whose signatures are collected may not be genuinely interested in the company's future well-being .The holding of a marketable parcel or for a sustained period may be used as a proxy for longer term shareholding and genuine interest.

If an issue is of interest to members, then the effort to collect 100 signatures should not be onerous. There may be some difficulty in raising 100 signatures for companies with very small registers such that raising signatures from members with five percent of the register may be preferable.

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We recognise and support the government's comment that "some avenues for shareholder participation can impose significant costs on companies. The need to encourage shareholder participation must be balanced against the need to manage the associated costs to the company (and through it other shareholders)". Companies will face some natural cost of meeting shareholders needs but this cost must be managed. Costs are not only financial, but also relate to time. Shareholders also face time constraints and value a focused meeting where the Chairman has balanced the need for shareholders to be heard with relevance to the shareholders.

Facilitate the electronic circulation of members'' resolutions and members' statements (sections 249O and 249P)

The ASA Exposure Draft of the Policy Statement "Shareholders Expect" covers communications with shareholders in section five and circulation method particularly in section 5.2:

> ***5.2 Dissemination***
>
> *Written communications should be mailed to all shareholders, unless they have specifically requested otherwise.*

The ASA supports the proposal to facilitate the electronic circulation of members' resolutions and members' statements where shareholders have requested electronic delivery of the notice of meeting.

We note that the ASA receives regular complaints from rural shareholders who face less timely postal deliveries than city based shareholders. Unfortunately electronic communication may not be a viable alternative due to dial-up Internet access with poor line speed. For these shareholders there is a need to provide written notice via the postal service.

Ensure the voting intentions of members are carried out by appointed proxies by preventing the 'cherry-picking' of proxy votes (subsections 250A(4) & (5))

The ASA supports this proposal.

The awarding of a proxy is a responsibility that should be taken seriously and cherry-picking of proxy votes is unacceptable.

In relation to the provision of relief to proxy holders who for some reason do not vote on a poll we would prefer that valid directed proxies were automatically included in the tally of voting. We agree that there may be situations where the intended proxy holder has not been informed of their appointment. However a proxy is not valid until the proxy-holder collects the documentation from the proxy desk at the meeting. If the intended proxy holder does not collect the proxy, it reverts to the chairman of the meeting. Therefore we have difficulty envisaging a situation where a holder of a valid proxy is not aware of the situation. ASA envisages legitimate situations where a proxy-holder is unable vote a proxy despite originally having every intention to do so (if the meeting takes longer than expected and the proxy-holder needs to depart prior to a poll being called). As previously referenced, ASA Exposure Draft of the Policy Statement "Shareholders Expect" covers this situation (section six):

> *…….Management of business needs to recognise that sometimes the length of a meeting is indeterminate. Consequently, where voting is to be on a poll the poll should be opened at the commencement of the meeting so that shareholders who wish to depart before the formal vote can participate…..*

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The ASA understands that in some cases, people, who do not understand the responsibility they have accepted, may be appointed as a proxy holder. The requirement for a person to be guilty of an offence for contravention of paragraph 250A(4)(d) to have either have held himself or herself out as willing to act or the company held this person out as willing to act should protect them from any inadvertent contravention. We support the absence of this relief for the chairman of the meeting.

Further to the preceding paragraph, it is also difficult to imagine where a proxy holder would have valid conflicting proxies and therefore vote in error on a show of hands. Perhaps this situation could be avoided with a note being added to the proxy sheet handed to the proxy holder "Proxy holders must vote as directed and where holding conflicting directions must abstain from voting on a show of hands."

Amend the requirements relating to the disclosure of proxy votes (subsection 250J(1A))

The ASA supports this amendment, the repealing of subsection 250J(1A).

As previously stated, ASA Exposure Draft of the Policy Statement "Shareholders Expect" covers meetings with shareholders in section six:

> *…….Moreover, regardless of whether a poll is to be conducted, shareholders expect that all voting should initially be on a show of hands so that the strength of votes by individual shareholders is evident….*

Remove the requirement for companies to disclose information reported to overseas exchanges (section 323DA)

The Australian Shareholders' Association is concerned that the removal of the requirement to disclose information reported to overseas stock exchanges is likely to disenfranchise investors who are not able to refer to these releases via the Internet.

We believe any information that is not similarly required by the ASX should be released in the same format as released to the foreign Stock Exchange. The simultaneous release will offer shareholders the opportunity to monitor any coincidental price movements (as ASX continuous disclosure requirements requires the release of any price sensitive information the disclosures under 323DA would all be non-price sensitive) and prevent an erosion of trust or perception that foreign shareholders receive superior disclosure.

Amendments withdrawn from the 2002 Exposure Draft
Retaining 28 days notice period

We support the retention of the 28 days notice period. While 50% of our members use the Internet for communications, a significant proportion are rurally based and suffer longer postal delivery times than their city based counterparts. Also the complexity of decision, the need to seek advice, and time available to monitor decisions all contribute to the 28 days period being more appropriate for the disparate and numerous shareholders in publicly listed companies.

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