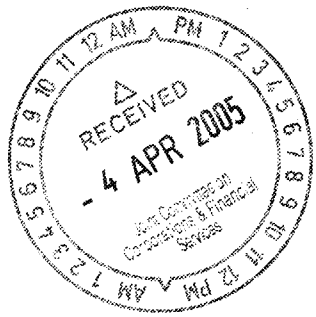

Law Council
OF AUSTRALIA

Dr Anthony Marinac
Acting Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
Canberra ACT 2600

Dear Dr Marinac,

Inquiry into Exposure Draft of the Corporations Amendment Bill (No 2) 2005

I refer to your letter of 29 February 2005 inviting the Corporations Committee of the Business Law Section of the Law Council of Australia to make a written submission to the Parliamentary Joint Committee.

I enclose a copy of our letter to the Treasury responding to its request for comments on the Exposure Draft by way of written submission.

Please contact the Chairman of the Corporations Committee, John Keeves, on [08] 8239 7119 if you would like to discuss any of the issues raised in the submission.

Mr Keeves would be happy to give evidence to the Parliamentary Joint Committee should that be required.

Yours sincerely,

Peter Webb
Secretary-General

1 April 2005

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Mr Michael Rawstron
The General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL: cab2005@treasury.gov.au

Dear Mr Rawstron,

Corporations Amendment Bill (No. 2) 2005 – Exposure Draft

On behalf of the Corporations Committee of the Business Law Section of the Law Council of Australia this letter responds to your invitation to comment on the exposure draft of the above Bill.

Please note that these comments have been endorsed by the Business Law Section. However, owing to time constraints, they have not been considered by the Council of the Law Council of Australia.

The Committee supports removing the 100 member rule for requisitioning meetings

The Corporations Committee welcomes the proposed removal of the "100 member rule" – the proposed amendment to subsection 249D(1).

The Corporations Committee believes that there is general support for this measure and, in particular, that shareholders of listed public companies will not be materially disadvantaged by the removal of the 100 member rule. If shareholders who wish to requisition a general meeting cannot obtain the support of shareholders with 5% of the voting rights it is unlikely that the

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matter concerned would be of sufficient relevance to the economic interests of the company's shareholders to justify a meeting.

The principal likely result of the removal of the 100 member rule is significantly reducing the ability of special interest groups to raise issues that are not relevant to the economic interests of company shareholders – in effect misusing the mechanism under section 249D for a purpose unconnected with the policy foundation of the provision.

It is important that listed public companies are not put to the unnecessary expense or distraction of pointless meetings and that corporate resources are conserved for the benefit of shareholders and used to advance their economic interests. The Committee notes in this regard that a significant proportion of Australian company shares are held with a view to funding future retirement incomes.

The Corporations Committee believes that there is no evidence of systemic problems that need to be addressed by the maintenance of the 100 member rule. Indeed, the Committee believes that genuine corporate governance issues will be brought to light through the mechanisms of subsection 249D (as proposed to be amended by the Bill) and related provisions.

Concerns about 20 member rule

However, the Corporations Committee has concerns about the proposed amendment to paragraph 249N(1)(b) – which we refer to as the "20 member rule". That is, permitting 20 members of a company to bring forward a resolution for consideration at a meeting that will take place in any event.

The Corporations Committee believes that 20 is too low a number. Gaining 100 members to support a proposal is not a difficult exercise in a company of any size. Gaining the support of 20 members is significantly easier and may well facilitate the putting forward of unmeritorious proposals that would not otherwise be presented with consequent unjustified costs, delay and distraction.

That is, a proposal which is supported by 20 people but would not be supported by 100 is hardly likely to justify the attention of a shareholders' meeting.

It is not in the interests of shareholders to clutter annual general meetings with irrelevant motions and require companies to send further material to shareholders to consider matters that are of interest to a relatively small number of shareholders.

In the Corporations Committee's experience, it is likely that these matters would relate to issues which are not connected with the performance of the company or the interests of shareholders – which should be the primary matters of importance to be considered by shareholder meetings.

While as the Corporations Committee has noted above there is no evidence of problems which require the maintenance of the 100 member rule, there is equally no evidence to suggest that the 20 member rule should be introduced; that is, there is no evidence to suggest that requiring 100 members to support the putting forward of a resolution is too high a hurdle. The Corporations Committee questions the basis for introducing the 20 member rule, and suggests that it ought to be the subject of consideration by the Corporations and Markets Advisory Committee before it is introduced.

If the Government is inclined to implement the 20 member rule, the Corporations Committee would urge that the amendment be subject to a 3 year review period so that the 20 member rule is reviewed and reconsidered in light of actual experience of the 20 member rule in practice.

The Corporations Committee also notes that there is a view that certain types of companies may need to be the subject of special rules, noting that CAMAC in its June 2000 report (Shareholder Participation in the Modern Public Company) supported the removal of the 100 member rule in relation to listed public companies and the the Parliamentary Joint Committee on Corporations and Securities in its Report on Matters arising from the Company Law Review Act 1998 suggested that mutual companies be subject to different provisions. If it is considered that the 5% threshold should not apply and special rules should be imposed for particular companies or classes of companies, the regulation making power in subsection 249D(1A) enables this to occur. In the Corporations Committee's submission, no amendment to the proposed Bill is required in this regard.

Managed investments

The Corporations Committee also believes that the proposed amendments in the draft Bill applicable to companies should also be applied to managed investment schemes, with equivalent amendments made to Part 2G.4 of the Corporations Act as are being proposed to Part 2G.2. There is no reason in principle to treat managed investment schemes and companies differently. Indeed, given the number of examples of stapled securities (where shares and units in managed investment schemes are traded together), having inconsistent regimes applying to companies and managed investment schemes is not a desirable policy outcome.

Amend draft section 250A

The Corporations Committee also suggests that the amendments to section 250A concerning proxy voting be altered. Subsection (4A) should be deleted so that the ordinary meaning of the expression "in any capacity" would be applied, otherwise, for example, a person voting in the capacity as a corporate representative under section 250D would not be covered by subsection (4A). Alternatively, subsection (4A) ought to be changed so that it is made clear that voting in other capacities is also included by mentioning corporate representatives and persons voting under power of attorney.

* * *

Please contact the Chairman of the Corporations Committee, John Keeves, on (08) 8239 7119 if you would like to discuss this letter.

Yours sincerely,

Peter Webb

Secretary-General

1 April 2005