



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

7 April 2005

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

Dear Dr Marinac

Corporations Amendment Bill (No 2) 2005

Chartered Secretaries Australia (CSA) is the peak membership body for governance professionals in Australia. It promotes and advances the effective governance and administration of organisations in the private, public and not-for-profit sectors.

CSA welcomes the opportunity to comment on the provisions contained in the government's Corporations Amendment Bill (No 2) 2005. CSA has made previous submissions on these matters and has a substantial interest in and consistent view of the proposed changes. In general, CSA believes that the proposed legislation will assist in both increasing corporate governance and shareholder participation in Australia.

In respect of the substantive provisions of the Bill, CSA comments:

- **Section 249D: calling of a general meeting by directors when requested by members**

We strongly support the repeal of the 100-member rule and the maintenance of the requirement that shareholders requesting a meeting should have at least five per cent (5%) of the votes that may be cast. CSA has made many submissions on this matter and has supported a range of different proposals designed to provide the necessary balance between allowing shareholders to participate in meetings of the company and the need to control the costs of organising shareholder meetings. This simple five per cent (5%) proposal is a welcome solution, that operates relative to the size of the company, without the complications of calculating tiered and mathematical solutions produced in the past.

- **Sections 249N(1)(b) and 249P(2)(b): members' resolutions and statements for annual general meetings (AGM)**

Throughout the submissions made by CSA on the repeal of the 100-member rule for calling meetings, we have supported the retention of the requirement for 100 members to place resolutions before shareholders at the general meeting. We believe this is a fair balance in allowing greater shareholder participation at meetings. From experience there have been few such resolutions, although it is clear from recent experience that they are increasing in number.

Many of these resolutions have been submitted by special interest groups with little relevance or interest to the bulk of shareholders, individual or institutional. We believe that the requirement that such resolutions should be submitted by at least 100 members should be retained without reduction, as this represents a fair measure of support that the matter deserves to be discussed at an AGM. We believe that the reduction of the threshold to 20 members without any compensating proper purpose test could see a proliferation of minor, irrelevant, vested-interest issues being included on the agendas of general meetings. This would only serve to make AGMs larger and longer, potentially to the detriment and irritation of members who attend.

We strongly recommend that this provision be withdrawn from the Bill and that the current requirement for 100 members or members with at least five per cent (5%) of the votes be retained.

We note that this view is supported by other professional and investor bodies with interest and experience in this area, as outlined in the jointly signed letter to the Department of Treasury, dated 22 March 2005.

- **Sections 249O(2) and 249P(6): electronic circulation of members' resolutions and statements**

CSA supports these provisions and is actively involved in promoting and establishing appropriate measures to assist companies in their dealings with members and in encouraging member participation. A significant number of companies represented by our members has already put such measures in place and are benefiting from reductions in the expenses of distribution.

- **Section 250A(4)(d): 'cherry-picking' of proxy votes**

CSA welcomes the inclusion of these proposed amendments in the Bill. CSA was first to raise this matter, in 2003, and submitted draft amendments to the law at that time. In that November 2003 submission, CSA sought to widen the current requirement for the chair of the meeting to vote as instructed so that all other directors and the company secretary appointed as proxy holders would also be obliged to vote as instructed. We recognised that widening this requirement to *all* proxyholders would not be acceptable, however desirable this might be.

We welcome, therefore, the proposed amendment requiring proxy holders (other than the chair) who vote in any capacity on a poll to vote all of the shares for which they hold instructions and not deliberately withhold votes that are contrary to their personal views. We note, however, that there have been instances of proxy holders receiving instructions to vote both for and against a resolution deciding to abstain voting all shares, thus depriving the members giving the proxies of their vote on the matter. We suggest, therefore, that where a proxy holder has specifically held themselves out as being willing to act as proxy at the meeting, they should be obliged to vote all shares as directed. This is not difficult to police: the share registrars receiving the proxy instructions will be aware of the intentions of the members giving the proxies and can inform the company if such instructions have not been followed.

- **Section 250J(1A): disclosure of proxy voting**

CSA welcomes this proposal repealing the requirement for the chair to inform the meeting of proxy votes received. While this could be seen as a measure to inform those present at the meeting of the views of the overall membership, it can often be seen as provocative when most matters are decided on a show of hands. For the reasons set out in the explanatory memorandum, such disclosure can only be indicative. We agree that repealing this provision will not preclude the chair of the meeting from providing the information if and when they so desire or if the members request it.

We note that listed companies will still be required to disclose to such details to ASX, even if the matters are decided by show of hands and not put to a poll. We believe that the provisions of section 251AA – Disclosure of proxy votes – listed companies should be revisited.

- **Section 323DA: disclosure of information filed overseas**

CSA supports the deletion of this section. We agree that this is a matter for the ASX and its Listing Rules.

Section 279(5): updating references to Patents/Trade Marks/Designs legislation

CSA supports the proposed amendments.

Shareholder participation

CSA would also like to comment on the importance of the proposed amendments in the broader context of shareholder communication and participation. Most Australians are shareholders in major corporations, either directly, through investment funds, or through their superannuation and, as a result, there is a need for more opportunity for engagement. However, CSA is of the view that increased engagement needs to be effective, and not undertaken simply for its own sake.

For example, the annual general meeting (AGM) remains the principal means by which shareholders can engage directly with the company board, discuss with the company directors and management issues arising from company performance and prospects, consider the accounts and vote on the election of directors and resolutions. There is a legal requirement that shareholders present at a general meeting have a reasonable opportunity to ask questions of the directors and auditors and discuss issues concerning the management of the company.

However, changes in technology have provided an opportunity to re-evaluate the AGM, with a view to improving its effectiveness and value to shareholders. Some of the questions of how to provide value to shareholders at the AGM have been addressed in the Corporations Amendment Bill (No 2) 2005. Another mechanism that can be explored is direct voting.

Further useful suggestions were canvassed in the Discussion Paper ‘Company and Shareholder Dialogue’, co-authored by the Business Council of Australia, Chartered Secretaries Australia and the Australian Institute of Company Directors and released in 2004. A copy of that Paper is attached to this submission. The suggestions that were examined included (to quote from that Paper):

- “asking shareholders in advance to identify those issues that they wish to see discussed at the AGM
- placing issues identified by shareholders formally on the agenda of the AGM
- holding regular ‘shareholder meetings’ to supplement AGMs
- improving the conduct of AGMs and the opportunities for shareholder participation
- having the heads of board committees available to answer shareholder questions on issues for which their committee is responsible or, alternatively, having the heads of board committees provide shareholders with a short presentation on their area of responsibility
- establishing and implementing ‘Shareholder Communications Policies’”.

Many Australian companies already seek the views of shareholders on issues they would like to see discussed at the AGM, place those issues on the agenda as part of the questions and answers forum on financial performance and have developed shareholder communication policies. There are different models currently being utilised by a range of the major companies and these lead the way in shareholder participation and provide examples for other companies to follow.

On this front, we recommend that such matters be left to each company to consider and implement according to their own circumstances, and within the context of best practice as exemplified by leading companies.

In closing, CSA urges the Committee to recommend the amendments to sections 249D, 249O(2), 249P(6), 250J(1A), 323DA and 279(5).

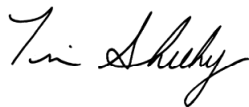
CSA further urges the Committee to recommend the amendment to section 250A(4)(d), but also to consider ensuring that a proxy holder be obliged to vote all shares as directed.

CSA also urges the Committee *not* to recommend the adoption of sections 249N(1)(b) and 249P(2)(b).

In preparing this submission, CSA has drawn on the expertise of members with a deep working knowledge of the issues.

I would be happy to discuss any of these matters further with you if you wish, or to arrange for our members to present their views to the Committee in person.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Tim Sheehy'.

Tim Sheehy
CHIEF EXECUTIVE