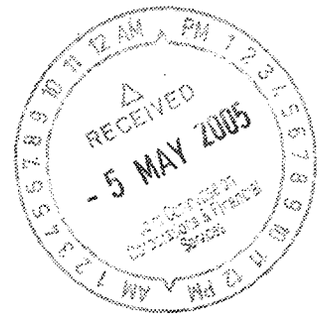

1 April 2005

The General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600
By e-mail & facsimile

Dear Sir/Madam

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

I write in response to the *Corporations Amendment Bill (No.2) 2005* Exposure Draft, specifically in relation to the removal of the '100 member rule' and other proposed changes to the *Corporations Act*, and enclose our submission detailing our position.

The NRMA has had substantial first hand experience of the effects of the inappropriate use of existing provisions in the *Corporations Act* originally intended to strike a balance between the democratic rights of members and the effective management of a company.

Removal of "100 member rule" – section 249D

The NRMA strongly supports the removal of the 100 member rule. The NRMA's repeated experience over recent years has seen a situation where 0.005% of members are able to call a special meeting at the cost of approximately $4 million. This circumstance has occurred 7 times in the past 3 years. Clearly this continues to pose a significant distraction to both the Board and Management's operation of the business.

These costs become even greater when the NRMA is forced to pursue legal proceedings with respect to the validity of proposed resolutions. This is clearly untenable.

Of even greater concern is that none of the 10 or so resolutions voted on by the members were passed by the requisite majority. This demonstrates a shortcoming that provides an opportunity for a small number of disaffected members to call a meeting that does not have support of the wider membership.

The NRMA supports the proposal to increase the threshold for the calling of a special meeting to 5% of the total number of members or equivalent. This would clearly provide a balance between the need for the responsible management of an organisation and the democratic right of members to hold board and management accountable.

Members' resolutions – section 249N

The NRMA views with concern the proposal to amend paragraph 249N(1)(b) that reduces the number of members from 100 to 20 required to propose a members' resolution at a company general meeting. The NRMA already believes that the existing 100 member requirement allows for members to initiate resolutions that represent only a small minority of members. This figure of 100 should be increased not decreased. As section 249N operates in the context of a scheduled general meeting, the member requirement to propose a resolution should be 1%, rather than the 5% required for a special general meeting.

Distribution of members' statements – section 249P

The NRMA has similar concerns about the distribution of members' statements. The NRMA has a desire to achieve a balance between members' democratic rights to present a statement under 249P and the costs incurred to prepare and distribute such statements, particularly considering the potential for the volume of statements to increase as a result of this lower threshold. Again, a 1% member threshold should be required.

"Cherry-picking" of proxy votes – sub-sections 250A(4) and 250A(5)

The NRMA strongly supports the proposed amendments to sub-sections 250A(4) and (5) designed to prevent the practice of 'cherry-picking' of directed proxy votes by non-chair proxy holders. In fact, the NRMA supports stronger sanctions as a deterrent for the practice of cherry-picking.

In our attached submission the NRMA proposes an additional amendment to the *Corporations Act* whereby the chair becomes the default proxy holder in place of the person appointed as the proxy holder if there is a contravention of paragraph 250A(4)(d) and an act of cherry-picking occurs.

This additional measure would ensure that the proxy giver is not disenfranchised through the cherry-picking of votes by the proxy holder.

I trust that the NRMA has clearly outlined its position on the exposure draft and would be happy to elaborate on any of the arguments we have presented in our submission.

Yours sincerely,

Alan E Evans
President

National Roads and Motorists' Association Limited

SUBMISSION

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

1. NRMA Background

NRMA is a public company limited by guarantee with approximately 2 million members. It also falls into the class of companies that may be described as public company "mutuals". On a resolution put to the vote at a meeting of members, each NRMA member has one vote, both on a show of hands and on a poll.

2. NRMA Supports the Removal of the "100 member rule" – Section 249D

NRMA strongly supports the proposed removal of the "100 member rule" insofar as it applies to a request by members to call and hold a special general meeting.

NRMA's own recent experience in relation to requisitions for SGMs which have been raised in reliance on the 100 member rule confirms the validity of the concerns articulated in paragraph 2.3 of the Explanatory Memorandum accompanying the Exposure Draft and the need for those concerns to be addressed.

Over the past 3 years, NRMA has received 7 separate requisitions to call and hold a SGM under section 249D, the "prime movers" of which have been essentially a handful of disaffected members or other special interest groups. The number of signatories has generally ranged from about 0.005% up to 0.2% of the total number of NRMA's members.

In some cases, NRMA was forced to seek Court rulings as to the validity of the proposed resolutions set out in the requisitions, resulting in substantial legal costs being incurred.

The most recent requisition was instigated by the AMWU with the clear purpose of influencing its negotiations with NRMA in relation to a long standing industrial dispute between NRMA and its roadside assistance patrols.

In view of NRMA's large membership base, the cost of calling and holding a "stand alone" SGM is approximately $4 million. The need to respond to these requisitions also significantly distracted NRMA management and the Board from their core responsibilities of managing and overseeing the conduct of NRMA's affairs.

It is particularly noteworthy that none of the resolutions set out in the various section 249D requisitions received by NRMA which were voted on by members were passed by the required majority of votes. This indicates a clear divergence between the relative ease of reliance on the 100 member rule and the member approval thresholds for passing ordinary and special resolutions under the Act. The removal of the 100 member rule will substantially narrow the "gap" between these two thresholds. In NRMA's view, that outcome is desirable in the context of requisitions for SGMs.

3. Members' resolutions – section 249N

In principle, NRMA supports legislative initiatives to facilitate increased member participation in corporate governance. However, NRMA has concerns with the proposed reduction of the numerical threshold for members' resolutions from 100 to 20 to be achieved by the proposed amendment to paragraph 249N(1)(b).

NRMA considers the proposed threshold of 20 members is too few. Indeed, it considers the existing threshold of 100 members is too few.

In practice, at least in the case of NRMA, listed companies and most other widely held public companies, the proposed reduction is unlikely to significantly enhance the ability of members to propose a section 249N resolution. In other words, it will be marginally more difficult to obtain the support of 100 members than it would be to obtain the support of 20 members. Accordingly, we question whether this measure "will make it significantly easier for shareholders to add resolutions to the agenda of the AGM" for the vast majority of public companies.

Whilst it is true that the submission of a section 249N resolution does not require the company to incur the significant costs associated with the calling and holding of a SGM, many other consequences outlined above in the case of section 249D requisitions are equally likely to emerge. Questions as to the validity of the proposed resolution(s) are no less likely to arise. The Board will be required to devote resources to the preparation of additional material in the notice of meeting, including its response. Additional costs will inevitably be incurred. The consideration by members of the proposed resolution(s) may impede their consideration of the important ordinary business of the Annual General Meeting (or next scheduled general meeting).

In the light of these factors and the proposed removal of the 100 member rule as it applies to SGMs, NRMA prefers that the existing 100 member threshold in paragraph 249N(1)(b) be replaced with a different threshold, such as:

(a) 1% of the total number of members;

(b) a scaled minimum number of members which is proportionate to the total number of members; for example, 10,000 members where the total number of the company's members exceeds say 1,500,000; or

(c) such number as equals the square root of the total number of members.

NRMA believes that such a threshold strikes an appropriate balance between facilitating increased member participation at general meetings and the potential abuse of the section 249N procedure. In previous submissions to Treasury, NRMA has put forward the 1% proposal as its preferred minimum threshold for the proposal of a section 249N resolution.

If the Government is minded to pursue the proposed amendment of section 249N(1)(b), NRMA asks that this amendment be subject to review in say 3 years time to enable the impact of that change to be assessed in light of the actual experience of companies and their stakeholders.

4. Distribution of members' statements – section 249P

NRMA has similar concerns with the proposed reduction of the numerical threshold for the provision of members' statements from 100 to 20 to be achieved by the proposed amendment to paragraph 249P(2)(b).

As with the proposed amendment to section 249N, NRMA considers the proposed and existing thresholds of 20 members and 100 members is too few.

The Board will almost inevitably be required to devote resources to the preparation of a response to any section 249P statement which the company is required to distribute to its members. Additional costs in relation to the distribution of the section 249P statement and the responsive material will ordinarily be incurred.

For these reasons, NRMA prefers that the existing 100 member threshold in paragraph 249P(2)(b) be replaced with one of the thresholds mentioned above for the purposes of paragraph 249N(1)(b). By so doing, NRMA believes that the rights of members to request the distribution of a statement under section 249P will be appropriately balanced against the goal of facilitating increased member participation by encouraging avenues for communication of their views.

5. "Cherry-picking" of proxy votes – sub-sections 250A(4) and 250A(5)

NRMA strongly supports the thrust of the proposed amendments to sub-sections 250A(4) and (5) which are intended to prevent the practice of "cherry-picking" of directed proxy votes by non-chair proxy holders.

NRMA accepts that the proposed sanction of an offence being committed where a contravention of the proposed new sub-section 250A(5) is established will be a significant deterrent to the practice of "cherry-picking". However, the NRMA is concerned that the proposed reforms do not ensure that directed proxy votes which are not cast by a non-chair proxy holder in the relevant circumstances are included in the actual count of votes on the poll. NRMA believes that the introduction of an additional measure which has, or is highly likely to have, the effect of bringing about the actual and immediate enfranchisement of members whose votes would otherwise not be taken into account in the circumstances of a contravention of paragraph 250A(4)(d) is warranted.

An additional measure the following proposed new sub-section 250A(4B) is suggested:

"(4B) Where a person contravenes sub-section (4) because of paragraph (4)(d) then, despite anything to the contrary in the proxy appointment, the chair will be taken to be appointed as the appointor's proxy to vote on the poll on the particular resolution in the way specified in the proxy appointment in the place of the person appointed as the appointor's proxy in the proxy appointment."

The intent of this suggested new sub-section is to bring about a default appointment of the chair as the member's proxy where there is a contravention of the proposed new paragraph 250A(4)(d). The chair is, of course, obliged to vote on the poll in accordance with the member's directions (paragraph 250A(4)(c)).

Proxy forms issued by most public companies provide for a default appointment of the chair where, amongst other things, the appointment of a nominated non-chair proxy fails for any reason. The most common reason for failure of such an appointment is the named proxy's non-attendance at the meeting. Under the suggested new sub-section, the position of the members whose votes would not otherwise be counted because of a contravention of proposed new paragraph 250A(4)(d) would therefore be the same as members whose "primary" proxy appointment made on a typical proxy form fails for any reason.

The deemed default appointment of the chair under the suggested new sub-section 250A(4B) occurs where there is a contravention of paragraph 250A(4)(d). It is not predicated on the additional ingredients required for an offence under that paragraph as set out in the proposed new sub-paragraphs 250A(5)(d)(i) and (ii) being made out. NRMA submits that the circumstances giving rise to a contravention of paragraph 250A(4)(d) (rather than a finding by a Court that a person is guilty of an offence for contravening that paragraph) are sufficient to trigger a default appointment of the chair.

NRMA also submits that the immediate enfranchisement of the affected members resulting from the application of the suggested new sub-section 250A(4B) in the relevant circumstances is preferable to the alternative approach of seeking an application for a mandatory injunction under section 1324. As you will appreciate, an application for such an injunction will result in significant legal costs being incurred and in all likelihood cause delay in the final outcome of the poll in question being determined.

Finally, NRMA submits that an increase in the potential penalty for an offence under the proposed new sub-section 250A(5) beyond the currently proposed 5 penalty units is warranted.