CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

Mr. M. Rawstron
The General Manager
Corporate Governance Division
The Treasury
Langton Crescent
Parkes ACT 2600

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Exposure Draft Bill for consultation –
Corporations Amendment Bill 2002

Dear Mr. Rawstron

Chartered Secretaries Australia (CSA) welcomes the opportunity to provide input on the Exposure Draft for the Corporations Amendment Bill 2002. CSA has frequently commented on a number of these matters over the last couple of years and is keenly interested in their resolution.

CSA is Australia's peak membership body for corporate governance, and firmly consider ourselves as fully qualified to respond to this exposure draft. In Australia CSA has over 8,000 Members and Affiliates representing the majority of public companies listed on the Australian Stock Exchange. Members of CSA regularly deal on a day-to-day basis with the ASX, ASIC and the ACCC and have a thorough working knowledge of the operations of the markets, the needs of investors and the law and regulation dealing with market practices and independence.

- **Power of a single director of a listed company to call a meeting section 249CA**

  CSA supports the repeal of section 249CA and agrees with the comments of the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC) contained in the paper. In any event, apart from a well-publicised instance, there has been little occasion for use of the section.

- **Calling of general meetings by directors when requested by members section 249D**

  The 100 members / 5% of votes 'rule' has been a long-standing issue and CSA has made numerous submissions on the matter. CSA supports the removal of the 100-member rule for the calling of meetings and reiterates its argument that this rule has the effect of placing substantial expense on companies and the membership as a whole.

  To emphasise the point, very recently the Wilderness Society forced the Tasmanian wood products group – Gunns – to a shareholder meeting using this very provision of the Corporations Act. While the stated cost of the meeting to Gunns was in the order of "…tens of thousands of dollars…" the cost for a large listed public company such as Telstra would most likely exceed $1,000,000.

  As the current situation is unacceptable, and in our desire to bring this matter to a satisfactory conclusion, we have supported alternative proposals such as the square-root rule as a means of providing shareholders with an opportunity to express their views. In May 2001, CSA and a number of other professional bodies wrote to the then Minster for Financial Services and Regulation (Attachment 1) proposing an alternative solution. At the time the proposal had the support of Senator Stephen Conroy. The groups that signed the May 2001 letter are still in support of this proposal.

  Further to this matter it should be pointed out that CSA has not, and will not, argue against the submission of resolutions by 100 members to be included on the notice of AGM, as we believe this is the optimum solution for members wishing to raise an issue before the members, without incurring an unnecessary expense.

- **Explicit requirement for disclosure of the value of options - section 300A and subsection 300(1)**

  CSA supports the disclosure of executive remuneration in annual reports. This has been the subject of substantial comment in recent times. The Sections involved have however created a deal of uncertainty and inconsistency of reporting. A number of issues cloud consistent reporting under this section:

  - Payments made to former employees (that were employed at some time during the year in question) may sometimes far exceed those made to current employees,
  - In some industries, bonuses paid to traders can exceed payments made to the senior executives and
  - In some industries payments made to executives overseas can exceed payments made to senior executives in Australia.

  CSA believes that the section on disclosure of remuneration paid to directors and executive officers should be amended. CSA is of the view that disclosure should include all remuneration elements including cash, non-cash benefits and the value of share and options paid to the directors and to the five most senior current executive officers **(**being executives that have a position of control of the company or group) with separate disclosure of payments made to the five highest paid former executive officers (who retired or other wise left the company during the year, where those payments exceed the payments made to current executive officers) .

  CSA sees little value in disclosing payments made to less senior executives / employees in overseas posts or trading positions, merely on the basis that they fall within the group of most highly remunerated executives.

Subject to the above, CSA supports Item 10, disclosure of option details, Item 11 disclosure of Board policy on remuneration, particularly non-cash benefits and Item 14 disclosure of the value of options. We do however reserve our opinion on the prescription by regulation of the method of valuation of options. We believe there is significant debate on this matter to delay prescription.

CSA is aware that significant proposals are being considered in relation to the disclosure of director and executive remuneration in the light of recent payments and suggest that any changes to legislation be held over until this important matter has been debated to ensure that a consistent method of reporting can be agreed.

- **Removal of environmental reporting - paragraph 299(1)(f)**

  CSA supports the repeal of paragraph 2099(1)(f) for the reasons put forward by the PJSC set out in the paper.

- **Disclosure of information filed overseas - section 323DA**

  CSA supports the deletion of section 323DA, as this is more properly a matter for the ASX Listing Rules.

- **Disclosure of proxy voting - subsection 250J(1A)**

  CSA supports the repeal of sub-section 250J(1A). The requirement has caused substantial disquiet and confusion amongst shareholders attending AGMs. Apart from being difficult to accurately advise how proxy votes are to be cast, the announcement of the numbers is seen by many shareholders as a display of contempt for those attending the meeting. This has led to walkouts by those shareholders at some meetings as their ultimate form of protest.

  CSA believes that the whole section on the disclosure of proxies and votes cast at meetings should be repealed. This matter was introduced in 1998 with no consultation with the business community. It has created substantial work for companies in providing information that is both of little value to shareholders and to the market as a whole and is misleading where matters have been passed on a show of hands, particularly where the major shareholders are represented at the meeting rather than having appointed a proxy.

  CSA recognises that shareholders are entitled to know how matters are dealt with shareholder meetings - it is the nature and format of the reporting set out in the Act with which CSA raises objection.

- **Notice of meetings - section 249HA**

  CSA supports the repeal of section 249HA. The discrepancy between the period of notice of shareholder meetings, particularly AGM's and the minimum period for the submission of accounts - section 315 has caused some companies additional expense with extra mailings to fit tight timetables.

  This matter was introduced in 1998 without consultation with the business community and in its first year of operation required waivers to allow companies to go ahead with meetings already planned. In any event, whether 21 or 28 days notice is selected, we strongly suggest that the period for the distribution of the annual report / accounts be set for the same period.

- **Company secretaries - subsection 300(10)**

  CSA supports and welcomes this addition as recognition of the role of the Company Secretary in developing and ensuring implementation of appropriate corporate governance standards within companies.

  However, in addition, and in light of current failures and the need for good corporate governance CSA would like to reiterate its recommendation made in March 2000 that the Company Secretary of a public company be required to have formal qualifications prescribed by the Act, such as membership of one of the major accounting bodies, state law bodies or Chartered Secretaries Australia.

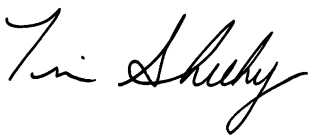
  As stated in our submission to the then Companies and Securities Advisory Committee

  "…The Institute is of the opinion that a properly qualified Company Secretary would improve overall compliance with the law, reduce public enforcement costs and ensure greater shareholder protection in regard to public companies. For unlisted companies we feel that a qualified Company Secretary would bring a level of competence to addressing corporate governance issues and should not be overlooked when progressing this exercise."

Adoption of this proposal would bring Australian practice into line with the long-standing practice in the UK. We would welcome the opportunity to discuss this further with you.

As stated at the beginning of this letter CSA welcomes these proposals. Many have been around for a long time and CSA would like to see the matters resolved.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE

CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

Attachment 1

25 May 2001

The Hon Joe Hockey MP
Minister for Financial Services and Regulation
Parliament House
Canberra ACT 2600

Dear Minister,

We the undersigned are keen to have the legislative requirements for calling an extraordinary general meeting under section 249D of the Corporations Law settled in a manner that will balance the rights of shareholders to have matters addressed against the importance of allowing directors to effectively run the company. While the 'square-root' rule goes a long way towards achieving this goal, we wish to suggest a modification to it.

It is generally accepted within much of the business and investment community, the Government and the Opposition that the current 100-member rule is unsatisfactory. A shareholder numerical test that accounts for the size of the company register, rather than relying on a single absolute number, is seen as being more equitable.

For the record, we suggest that the issued share capital test (the 5% rule), section 249D(1)(a), the proper purpose test, section 249Q, and the right of shareholders to put resolutions to scheduled shareholder meetings, section 249N(1), all be retained.

We support your proposal to replace the 100-member rule with a new 'square-root' rule. However, in order to make the test more equitable to companies and still preserve the principle of shareholder democracy we propose that for public companies:

- a 'cap' of 500 members and a 'floor' of 100 members be applied. This additional boundary will not lower the threshold of 100 that currently exists and will not require an overly onerous number of members in the larger and more widely held public companies;

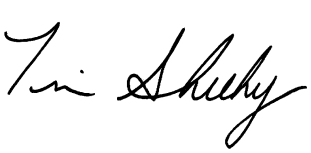
- a minimum economic interest of $500 be required for each member of a public company seeking to call a meeting.

The addition of the cap recognises that the number of members required to call a meeting of a large company, such as Telstra, Qantas or NRMA, under the square-root rule may be far too difficult to secure, whilst a "floor" preserves the current 100-member test for smaller companies.

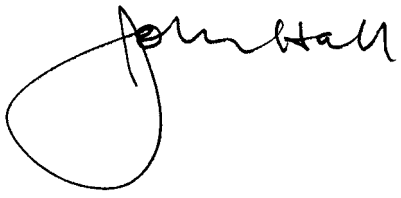
We believe the inclusion of a minimum economic interest test is an essential component for a fair and equitable test given the experience with the Wesfarmers and Rio Tinto meetings that were called in 1999. A minimum economic interest, combined with a 'cap' on the square-root rule, would mean that an investment of only around $190,000 would be required to call a meeting of a company such as Qantas, with a current market capitalisation of nearly $4 billion, or $250,000 for a company such as the Coles Myer with a current market capitalisation of just over $7.4 billion.

We realise that one of your objectives is to avoid '…an unnecessary level of complexity…' and we endorse that objective. However, we believe that these two additions are easy to understand, adopt existing market conventions and will not be difficult to administer.

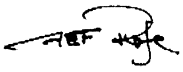
To further this matter, one of the undersigned will contact you shortly to arrange a meeting between yourself and us.



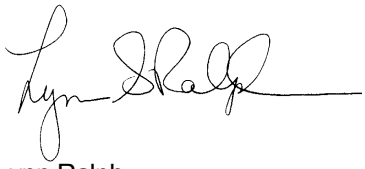
Tim Sheehy
Chartered Secretaries Australia



John Hall
Australian Institute of Company Directors



Ted Rofe
Australian Shareholders Association



Lynn Ralph
Investment & Financial Services Association

Michael Willis
Securities Institute of Australia