



CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

Governance and compliance imperatives for the next Federal Government

In the lead up to the next Federal election, Chartered Secretaries Australia (CSA), Australia's peak body for corporate governance, has identified key policy priorities for the next government and key regulators. CSA believes the policies outlined below are critical to foster greater confidence in Australian markets, enhance the performance of Australian organisations and substantially reduce the burden of continually increasing legislative and compliance requirements.

In summary, CSA calls for:

- The creation of a Corporations Panel
- Meaningful corporate governance guidelines published on the company's website
- A debate on the role of the traditional AGM and printed annual report
- All publicly listed companies to maintain a website for communicating to shareholders
- Swift retribution via civil penalties for breaches of insider trading provisions
- A rewriting of the Income Tax Assessment Act
- Abolition of the 15% superannuation surcharge, and
- Minimum qualifications for Company Secretaries.

Corporate governance – self regulation

It is generally recognised that over the last ten years Australia has put in place excellent corporate governance structures and principles. However as recent events have shown, much more needs to be done to achieve a consistently high level across all companies in applying these structures and principles. CSA is of the view that it is up to industry to set high standards of self-regulation and for market forces to foster compliance with them. Key ingredients for effective self-regulation would include:

Corporations Panel

A Corporations Panel, similar in concept to the Takeovers Panel, would facilitate a swift and more cost effective response to any failure to comply with the Corporations Act. The Corporations Panel would be responsible for overseeing the more 'wholesale' aspects of corporations law compliance, which are essentially contained within Chapter 2 of the legislation, such as members' rights, meetings, related party transactions and changes of auditor. A key role of the panel would be to address the perceived imbalances between the big end of town and small shareholders.

A Corporations Panel would be central to the self-regulation process. As with the existing Takeovers Panel, the panel would be comprised of industry members and empowered to undertake its role. CSA would welcome the opportunity to work with the next government to define the broad terms of reference for such a panel and to convene a taskforce to develop the concept further.

Corporate governance guidelines

CSA supports initiatives that would compel all publicly listed companies and large private companies to publish meaningful corporate governance guidelines. To be easily accessible, and at least available on the companies' website, these guidelines would outline the way boards operate, develop committees and communicate to shareholders.

CSA notes requirements under the ASX Listing Rules for a 'statement of main corporate governance practices' and applauds the comprehensive statements that are currently published by many of Australia's listed public companies. However, CSA calls for all companies to publish meaningful guidelines with a particular focus on the practical implementation aspects of the guidelines.

Notwithstanding the contents of Appendix 4A of the ASX Listing Rules, the guidelines should cover:

- criteria for attracting and selecting directors and the appropriate skills sets being sought that are particular to that company
- mechanisms to ensure transparency to shareholders in such areas as policies and processes for the release of company information, disclosure of directors' dealings, executive remuneration and the terms and types of option arrangements, and performance hurdles for senior executives
- full disclosure of the remuneration paid during the financial year to the five most highly remunerated officers of the company who are in service at the end of the year
- mechanisms to ensure a culture of transparency and full disclosure between management and non-executive directors, and
- board processes, board committees and their responsibilities and the expectations placed on directors in terms of the time commitment to the company.

Effective forms of participation and communication

CSA is of the view that there is an important debate to be had about the role of the traditional AGM and the printed annual report as effective mechanisms to ensure investors are adequately informed and adequately empowered to participate. With changes in technology and the increase in retail share ownership, the benefits to governance of other forms of communication can be substantial.

The implications of new forms of communication and participation such as on-line voting, electronic AGM's and web-casting are not properly addressed in the Corporations Act. These forms of communication may have rendered current methods less effective. CSA is not seeking to exclude the rights of any shareholders, but seeks to promote more efficient means of communicating with all shareholders.

CSA supports the introduction of a Replaceable Rule in the Corporations Act, mandatory for publicly listed companies, that allows for electronic voting and electronic participation in general meetings. CSA is willing to work with the Government and regulators in developing the appropriate changes.

Continuous disclosure

Websites

CSA is emphatic that no new price sensitive information should be disclosed in all briefings, whether private or selective, that it not available at the same time to the market as a whole. CSA supports any sensible moves to discourage the selective release of new price sensitive information.

To facilitate the effective distribution of information, CSA supports a requirement that all publicly listed companies maintain websites so that all slides and handouts from presentations and/or roadshows for analysts and influencers can be made available on release to all shareholders simultaneously.

Civil penalties

CSA has been vocal in calling for greater use of civil penalties over criminal prosecution regarding breaches of insider trading provisions. While Australia's continuous disclosure regime is strong, far too few prosecutions are successful. CSA is of the view that swift retribution via civil penalties for any transgression against the insider trading provisions will be effective.

CSA is supportive of Australia's framework of continuous disclosure as opposed to a framework of quarterly reporting as is in place in the United States. Australia's continuous disclosure guidelines as outlined in the ASX Listing Rules, and with Corporations Act enforcement ensure an effective mechanism to keep investors informed.

Legislative reform

Reduce the cost and ease the burden of compliance

In the last few years the pace of introducing new legislation has been vigorous. However, tax reform and the Corporate Law Economic Reform Program (CLERP) have lost direction and significantly increased the burden of compliance, particularly for smaller companies. In addition, the consultative process has often been rushed and the timetables for implementation are far too short.

Tax reform

CSA would support calls for a three-year moratorium on introducing new tax legislation so that Australia can 'scrap what we've got and rewrite the Income Tax Assessment Act'. In 1973 CCH publishers could reproduce the Income Tax Assessment Act in 560 pages. By the mid 1990s, the number of pages had grown to 3,000. We now have over 8,000 pages and that is only the beginning. There are currently 1,500 pages before Parliament in draft form. In addition, the Government has issued in excess of 60 rulings on GST alone and in terms of BAS we now have 12 forms to choose from depending on the type of taxpayer and their level of turnover.

Rewriting the Income Tax Assessment Act would lead to reduced compliance costs for large and small businesses, enable tax law to act as an incentive to attract foreign investment and assist in getting Australia's manufacturing industry back on its feet.

Underpinning the new tax regime should be a return of the cost benefit analysis of any proposed new legislation before it receives Royal Assent.

CSA is also concerned about a potentially negative outcome of any review of the current tax status of not-for-profit entities. Many not-for-profits, particularly industry-based organisations, play a key role in the setting and enforcement of professional standards and in educating members. A key principle in a not-for-profit is the reinvestment of all revenue to support the organisation's mission. Not-for-profits should be self-funding, but should also continue to benefit from their current tax-exempt status.

Superannuation reform

CSA fully supports the Association of Superannuation Funds of Australia's (ASFA) call for a wide ranging review of superannuation and the immediate abolition of the 15 per cent surcharge. This issue is constantly raised by the members of CSA as it is costly to collect and is a major impediment to an increasing number of Australians across all sections of the business community in adequately financing their own retirement.

Successive governments' failure to protect the retirement income of people they have forced to invest in superannuation clearly demonstrates this need. Any review must address tax, compliance and the prudential and social benefits framework.

Professional standards and education incentives

CSA maintains that minimum qualifications for Company Secretaries would ensure greater protection for stakeholders, improve compliance effectiveness and reduce enforcement costs. Company secretarial work is a specialist role that requires specialists. CSA's conviction of the need for minimum qualifications for Company Secretaries is not restricted to public companies. Company Secretaries of large proprietary companies and companies controlled by a foreign corporation, whatever their size, should have appropriate minimum qualifications and expertise.

It is noted that the Australian Stock Exchange already recognizes the importance of the Company Secretary by requiring that the name of the entity's Company Secretary be included in the annual report. However, CSA also supports having the qualifications of Company Secretaries published in the annual report of all listed companies as part of the ASX Listing Rules. CSA also calls on the government to reinstate the requirement that all large proprietary companies appoint a Company Secretary.

In addition, as a provider of industry-based higher education that is central to the self-regulatory process, CSA will be calling on the next government to provide personal tax incentives for the provision of accredited industry-based work-related education for professionals that are changing careers.

Much of the higher education in Australia is provided for by the private sector and delivered by numerous professional associations. With the introduction of the Australian Qualifications Framework, private providers have been able to offer accredited qualifications, substantially relieving the burden on government funding to Universities. This form of education is well advanced in Australia and is a successful blend of academic underpinning and practical application.

Personal tax incentives for those changing careers are essential to encourage mobility and flexibility in Australia's workforce.

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