CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

19 December 2012

John Kluver
Executive Director
Corporations and Markets Advisory Committee
GPO Box 3967
SYDNEY NSW 2001

By email: john.kluver@camac.gov.au
cc : camac@camac.gov.au

Dear John

The AGM and shareholder engagement

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency.

Our Members have primary responsibility to develop and implement governance frameworks in public listed, unlisted and private companies, and not-for-profit and public sector organisations. In listed companies they have primary responsibility to deal with the Australian Securities Exchange (ASX) and interpret and implement the Listing Rules. Our Members have a thorough working knowledge of the operations of the markets and the needs of investors, as well as compliance with the Corporations Act (the Act). We have drawn on their experience in our submission.

CSA welcomes the discussion paper, *The AGM and shareholder engagement* (the discussion paper). CSA Members are deeply involved in the preparation and running of the annual general meeting (AGM). They also assist boards to prepare the narrative elements of annual reports. As the key governance advisers in listed and unlisted public and private companies, they act as the nexus between the board and shareholders on corporate governance matters.

CSA's views on the AGM

Members of CSA have primary responsibility for the organisation and implementation of AGMs and, as such, are uniquely placed to comment on the future of the AGM.

History

The institution of the AGM is steeped in history and has remained (relatively) unchanged. It was created in an era of horse and coach; pen and ink; limited printing and a fledgling postal service, all of which dictated that members (or their duly appointed representatives) would physically meet with directors annually. Shareholders could gather physically without difficulty, and a large company would be one consisting of 100 shareholders.

Today, we live in a vastly different world and it is one that was not envisaged when these rules were enshrined.

Functions of the AGM

In CSA's view, the AGM has historically carried out two functions:

- as ***the*** forum for two- way collective engagement with shareholders, and
- as a decision-making ***event*** for the passing of resolutions

Current performance

CSA believes it can be demonstrated that the AGM ***as an event*** fails in the effective/efficient carrying out of those functions.

As to engagement, in the technological age there are numerous other forums now available, with much more timely information regarding the company made publicly available. Attendances at AGMs continue to fall.[1] There are 2,200+ companies listed on the Australian Securities Exchange (ASX). Outside of the ASX300, many companies, despite outlaying significant expense in holding a physical meeting, struggle to meet quorum requirements. Research by Computershare[2] shows that only ***0.16 per cent*** of shareholders attend AGMs.

As to being a decision-making event, in the overwhelming number of cases, the outcome of resolutions is determined before the event of the meeting, as institutional shareholders have voted either by proxy or by direct vote (where available).

By and large, retail shareholders neither attend nor vote. Research by Computershare[3] shows that across all channels and types of shareholders, only ***5.6 per cent*** of retail shareholders vote. In the same research, ***49 per cent*** of retail shareholders stated that they would not be voting as they considered that their small shareholding is insignificant.

CSA notes that the 2012 National Australia Bank (NAB) AGM illustrates how the AGM does not function as a decision-making event. Commentary at the time noted that 'The annual meeting has become a lightning rod for shareholder dissatisfaction with NAB's broader performance'.[4] However, CSA contends that these comments should not be directed at the meeting as an event. Reports from those present at the meeting were that attendance numbers were down and there was little discussion of the resolutions. The poll results show that the meeting as an *event* had no effect on how the vote went. Going into the AGM, there were 185,976,868 proxy votes against the remuneration report. Following the meeting, the results of the poll show that 'against' votes only went up to 186,070,149 — an increase of just 0.05% of the number of 'against' votes cast.

Positives of current system

Despite the fact that the AGM as an event does not effectively or efficiently carry out its functions, there are a number of positives about the institution that is the AGM:

- The holding of a physical meeting is generally agreed to be beneficial by being the one time of the year when boards are required to front shareholders and give them the opportunity to ask questions (regardless of whether shareholders take up that

---

[1] CSA's research over 10 years shows that shareholder attendance at AGMs is declining. In 2011, among the ASX top 200 (that is, companies with very large shareholder bases) the number of AGMs attracting 300 or more shareholders remained constant with the 2009 level at 20 per cent. When viewed as a percentage of the shareholder base, CSA research of the AX200 shows that attendance rates at the AGMs are down from 1.5% in 2007 — already a very small percentage o shareholders — to 0.6% in 2011. All statistics from CSA's *Benchmarking Governance in Practice in Australia*, June 2012.

[2] Greg Dooley, Managing Director, Computershare, *Breaking News*, Presentation to CSA's 2012 Annual Conference, Melbourne, December 2012

[3] Greg Dooley, Managing Director, Computershare, *The future of the AGM*, Presentation to CSA's 2012 Annual Conference, Melbourne, December 2012

[4] Attributed by Eric Johnston to Dean Paatsch, 14 December 2012

opportunity). It is considered the one time of the year when retail shareholders can engage with directors.
- The planning for an AGM focuses a company's board and executives on its shareholders. It has been said to compel boardroom behaviour.

Home truths

Our view is that the AGM doesn't really work as an event, yet it is a necessary element of the governance of a company. In looking at reforming the AGM to make it effective, we must have the courage to face and accept a number of things:

- The AGM as an event in its current form will never be a forum for institutional shareholder engagement. **The AGM as an event in its current form is all about the engagement of retail shareholders, and it fails at that.**
- Australia is the world's sixth largest country (7,682,300 sq km[5]) and shareholders are dispersed geographically. Physical attendances at AGMs will never approach a meaningful percentage of the number of holders a company has — nor in the case of large companies (some of which now have well over 1,000,000 shareholders) would that be desirable.
- By and large, the votes of individual retail shareholders will never influence the outcome of a resolution.
- A number of years ago, the Corporations Act embraced technology by creating an 'opt-in' system for shareholders to receive a hard copy of the annual report. The world did not fall off its axis. Generally less than 10 per cent of holders opt in to receive a hard copy annual report.
- Other than the change to the annual report delivery requirements, the Corporations Act has not kept pace with the exponential improvements in technology.
- The holding of an AGM in the current regulatory climate has significant cost implications for companies.
- Because of the linkage of the AGM to a company's balance sheet date through having to put the annual financial statements to shareholders for discussion (but not resolution), and the remuneration report for resolution, many companies have their AGMs around the same time, and there are many that unavoidably conflict with each other on a time/date basis. This further acts as a disincentive for retail shareholders to attend.
- Because of that linkage with the financial statements, the AGM is required to look at historical data. Why would a retail shareholder want to attend a meeting to discuss old data?
- The debate at AGMs is currently of little value and in companies with large shareholder bases that are also customer bases, the discussion tends to be about customer issues rather than shareholder issues.
- Shareholders are often more comfortable asking questions of the directors and senior management after the formal AGM than during the meeting. They engage more easily with directors and senior management at non-statutory investor briefings than at the AGM.
- Anecdotal evidence from companies' experience shows that retail shareholders are more engaged (and more likely to attend) an informal shareholder meeting where they can just hear from the board and executives and ask questions about a company's present condition and performance, rather than sit through a lengthy and highly formal meeting structured around the resolutions that need to be passed.
- The research from Computershare (see above) indicates that shareholders are more engaged when they vote directly themselves rather than distancing themselves from the event by appointing someone else to vote on their behalf.

[5] www.australia.gov.au

Next steps

The AGM is not working but is a necessary element in the governance framework. In any reform of the AGM, CSA believes that the focus should be on:

- making it more cost effective for companies (and therefore shareholders)
- increasing the engagement of all shareholders, with an emphasis on encouraging the engagement of retail shareholders.

Any reform needs to recognise that there are a range of companies operating across a variety of sectors, with vastly different shareholder profiles. Any new framework should have sufficient flexibility for all companies to engage with their shareholders in the most effective manner.

Quick wins

CSA believes there are a couple of very quick wins that could assist the existing AGM in working better:

1. Embrace technology

Move to an opt-in system for receiving hard copy meetings materials. A company would be required to announce to the ASX (and then place on its website in a clearly defined section):

- when the AGM will be held (as is currently the case, prior to the expiration date of an individual's right to nominate an external director)
- when the annual report and meeting materials are available online and how to access them and vote online. Voting online (by either online proxy lodgement or our preferred method, online direct voting, would be the default option, with shareholders being able to request hard copy voting forms). Shareholders who have provided their email address to a company and provided consent for electronic communication could be notified of this (as is currently the case).

The United Kingdom moved to a joint opt-in framework for the combined release of the annual report and notice of meeting — we have the precedent in another jurisdiction that an opt-in system for receiving hard copy meetings materials works. With hindsight, when Australia moved to an opt-in legislative framework for receiving hard copies of the annual report, it was probably a missed opportunity that we did not also move to an opt-in for hard copy meetings materials simultaneously.

2. Implement direct voting in its entirety and mandate voting via a poll

Do away with the system of proxy voting (which is a transfer of the rights of shareholders to attend and vote to another person), as this is anachronistic and a symbol of a bye-gone age where people had the need to appoint an individual to attend and vote on their behalf. We have seen many problems with the current system, some of which have required legislative intervention.

For example, amendments to the Corporations Act have been required to specify the duties of proxies and the chair's ability to vote undirected proxies on the remuneration report and spill meeting resolutions. Voting exclusions saw the introduction of the chairman's box for certain resolutions on the voting form under the ASX Listing Rules, which is still misunderstood by many retail shareholders leading to many lost votes. The complexities of the proxy voting system have also seen lost votes from institutional shareholders.

Most proxy forms are necessarily highly legalistic and may be difficult for shareholders, particularly retail shareholders, to understand, due to the complexities of the proxy voting system, which is yet another disincentive for retail shareholders to vote. If shareholders received a direct voting form only, it would consist of a simple form setting out a series of resolutions on which they were asked to vote, but there would be no lengthy and complex explanation, as now, of:

- how the appointment of a proxy works
- the effect of appointing a proxy in relation to any voting exclusions
- the difference between a directed and undirected proxy
- the need to expressly authorise the chair to vote on a shareholder's behalf.

For those shareholders accustomed to placing their faith in the chair by appointing the chair as their undirected proxy, a simple statement on the voting form would indicate the recommendation of the chair in relation to each resolution, but the shareholder would still vote directly.

By replacing the system of proxy voting with direct voting, and mandating direct voting and voting via a poll, all of these issues become redundant and the system ensures that the result of all resolutions is the will of the eligible shareholders that voted on them. Voting could be undertaken online as well as through more traditional means. Shareholders would still retain the right to appoint a representative to attend the meeting and speak on their behalf.

The current problems with lost votes and the complexities of the proxy voting system fall away as institutional shareholders vote directly online. Adjustments could also be made to the voting entitlement date vis-à-vis the poll deadline (for example, the voting entitlement date could be a business day or two prior to the poll deadline) to ensure that custodians and other nominees have time in which to finalise and verify the voting instructions of the underlying beneficial holders.

CSA would be happy to take CAMAC through the details of how this would work in practice and the changes that would need to take place to implement this.

PART I: Blue-sky developments

In this section, we put a number of ideas forward for consideration in order to assist the process of major change for how the AGM could be improved in the future. **For the two ideas submitted, mandatory poll voting would be required at the bare minimum, but both are ideally predicated on each of CSA's 'quick wins' described above being implemented**.

1. De-linking functions of the AGM

As set out above, CSA believes that the AGM as an event in its current form does not function well as a decision-making forum. Institutional shareholders will always vote in advance; retail shareholders disengage and don't attend because:

- their attendance doesn't mean anything from a decision-making point of view
- the formality of the meeting means there are (often lengthy) recitals of the resolutions to be considered (even with a relatively small number of resolutions, it can take significant amounts of time just to recite the resolutions and proceed through the formalities, without any meaningful debate on the resolutions taking place, and this disengages shareholders at the meeting and discourages them from attending future meetings)
- of the time taken to vote (by poll or on a show of hands), and
- the meeting is required to focus on historical financial statements.

CSA therefore recommends that that consideration be given to removing the decision-making function of the AGM.

A listed company would still have a statutory obligation to hold a meeting of shareholders at least once every calendar year.

No decision-making business would be carried out at that meeting. Shareholders and their duly appointed representatives would be required to be given a reasonable opportunity to comment on and/or ask questions regarding at least the following:

- the directors' stewardship of the company (collectively and individually)
- the financial position and performance of the company (although not required to be linked to the last annual report)
- the operations of the company
- the strategy of the company
- the culture and governance of the company
- remuneration practices and outcomes for key management personnel (although not required to be linked to the last remuneration report)
- the outcomes of any shareholder business conducted since the last shareholder meeting.

In this way, the meeting would encourage the engagement with both retail and institutional shareholders. As a discussion of company performance and prospects, it would certainly attract institutional shareholders and the media and could also attract analysts. It would engender more meaningful discussion and improve the quality of the debate from what is currently seen at AGMs.

CSA is aware that some retail shareholder bodies currently express a desire to be included in the questioning of directors and senior management by the media that takes place after many AGMs and by analysts and institutional shareholders outside of the AGM, due to the quality of the debate. For those large companies with large retail shareholder bases that are also customer bases, many of them already provide different forms of non-statutory engagement throughout the year where shareholders can ask customer-related questions (Telstra being a good practical example).

Focusing the debate on shareholder issues at the meeting will assist retail shareholders to differentiate between customer and shareholder issues. Many retail shareholders are not professional investors, and providing them with access to a more meaningful discussion could assist in improving their financial literacy, which is a bipartisan policy goal.

Importantly, this provides retail shareholders with the same access at the meeting to the board and senior management to discuss company performance and prospects. It would not diminish the engagement that takes place with institutional shareholders that currently takes place prior to the AGM, as this engagement will continue to take place throughout the year and prior to voting.

The meeting need not be linked to the reporting season (although some companies will choose to do so) and it will ensure that the entire meeting is focused on what shareholders and their representatives wish to discuss and is not based on historical performance.

The matters that currently require shareholders' votes (for example, re-election of directors, the remuneration report, constitutional change etc) will still be required to be transacted. However, they will be transacted via direct voting and on a poll, separately from the meeting (with a default of online voting). There would be a requirement for companies to keep the polls open for a set period of time (for example, 28 days) and the poll results would be announced as soon as practicable after the polls close (to allow for a proper review to ensure validity of voting). During the 28 days, companies would need to be mindful of their continuous disclosure obligations. Voting results are still open to public scrutiny. Our earlier comments regarding adjusting voting entitlement dates to be earlier than polls closing to allow custodians and other nominees to properly vote on behalf of the underlying beneficial holders apply here also.

Engagement (on the resolutions) would be a matter for both the company and its shareholders, noting that with the requirement to publish the results and still hold a meeting about the company during the year, the company would remain open to public scrutiny for its actions. Those companies that engage will consider how best to provide for such engagement; this may include providing telephone dial-in access to ask questions about the resolutions; creating blogs to speak to the resolutions; and setting up social media discussion groups (such as via LinkedIn) where shareholders can ask questions about the resolutions. CSA can point to its own experience in this regard. Members of the international body, the Institute of Chartered Secretaries and Administrators (ICSA), debated the resolutions to be voted on at the 2011 member-requisitioned EGM and the performance of the member body in an ongoing LinkedIn discussion group over many weeks prior to the meeting being held in London. Directors of the international divisions, as well as members, participated in the discussion. Members felt far more informed as a result of this process.

If voting is contentious, or shareholders are dissatisfied with company performance since the last shareholder meeting, they are not constrained from expressing their views. The immediacy of social media means that any individual can express their views and find an audience. Shareholders can go to the press, write to the company, set up their own blog or discussion group online or ask the ASA to engage with the company on their behalf. Social media is not always a forum that companies can control — if companies choose not to engage actively with their shareholders, shareholders will find ways to make their views heard and it will be to the company's disadvantage.

The current decision-making forum is archaic and bound by centuries of formulaic law. Technology will continue to evolve and companies will innovate as to how best to provide for shareholder engagement. As that process of innovation unfolds, there need be no concern that, as is currently the case, the meeting is not being validly held should the technology fail.

Industry bodies such as CSA can provide guidance and education as engagement practice evolves. The law needs to provide a framework within which companies can continue to evolve engagement practices — it is vitally important that an archaic institution and framework is not replaced with another highly regulated framework that will quickly become out-of-date.

Voting would be on the same regulatory timetable as operates currently. The only difference would be that the annual report would **not** be formally required to be laid before shareholders (as shareholders would have the right to ask comment on and ask questions on the company's financial position and performance at the de-linked meeting). Of course, the annual report would still be required to be prepared and made available to them within the normal regulatory timetable.

2. Non-physical meetings for smaller companies

As stated earlier, many smaller companies struggle to attract shareholders to attend an AGM. Some even struggle to maintain a quorum (when directors are barred from voting their shares on resolutions such as the one to adopt the remuneration report).

This second idea revolves around companies outside of the ASX300 (or other similar measure such as market capitalisation) being able to elect to not hold a physical meeting but to hold a non-physical meeting instead. This is not predicated on idea 1 being implemented (although it would be eminently suited to it). The introduction of mandatory poll voting would be required, as would a safeguard for meetings to still be validly held, despite any technological glitches that may unexpectedly affect individual participation.

The intention to hold a non-physical meeting (and how it would be held, for example, webcast or via telephone briefing) would be required to be announced to ASX six months before the AGM date and published on the company's website.

Shareholders would be given the right to notify the company if they want a physical meeting. If within one month 100 shareholders (or shareholders representing five per cent of issued capital) request a physical meeting, the company would be required to hold a physical meeting.

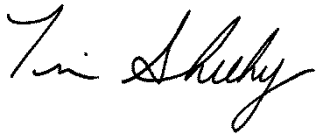
While ensuring that the cost of holding a physical meeting is not imposed on those companies that attract very few shareholders, it does not hinder shareholders being able to call a physical meeting if they have concerns with the board's stewardship and are seeking to voice their concerns.

Again, CSA would be happy to take CAMAC through the details of how these ideas would work in practice.

Our comments on how the current system of general meetings and shareholder engagement could be improved, including through technical innovation, and our responses to the questions set out in the discussion paper are set out in Part II of this submission.

Our recommendations on those questions are set out in Appendix A. However, we caution that reading our recommendations without also considering the context for them as set out in Part II is potentially misleading. We have provided them simply as a means of enabling CAMAC to have quick access to our recommendations after consideration of our reasoning for them.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE

Responses to questions for consideration

Part II: How the current system of general meetings and shareholder engagement could be improved, including through technical innovation

It is important to note here that all responses in this section should be read in light of our earlier comments in this submission, particularly around the 'quick wins' and 'blue-sky developments'.

Shareholder engagement

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **the role of the board collectively as it relates to engagement with institutional/retail shareholders throughout the year, including leading up to the AGM**
- **the role of particular board members, such as the board chair or the chairs of board committees, in relation to engagement with institutional/retail shareholders**
- **any other aspect of shareholder engagement?**

Shareholder engagement can be considered as the extent to which the shareholders:

- are aware of the company and its performance and prospects
- support the plans of the board and executives for its growth and success
- are prepared to stay shareholders to be part of that growth and success
- will continue to support the board if and when the company may hit bumps in the road, and suffer setbacks in volatile and highly competitive times.

Engagement between entities and their shareholders is not a matter of information alone. It is also about building relationships, and providing clarification on both sides as to why decisions are made and in what context.

There are no legislative or regulatory barriers to the ability of institutional shareholders to engage and participate in the relevant corporate affairs of the companies in which they invest. However, CSA is on the record as having commented on the challenges retail shareholders face in engaging and participating in the corporate affairs of the companies in which they invest, given that the AGM is the prime forum for such engagement for this body of shareholders and it is not attracting significant numbers to it.

The role of the board

Directors and officers control the destiny of the company, not for their own benefit but rather for the benefit of all members. They are the stewards of the company's property and operations and they are accountable for that stewardship. They have statutory duties to act in good faith and for a proper purpose in the best interests of the company. Their statutory responsibilities to act with care and diligence, not misuse position or information and avoid placing themselves in a position of conflict where personal interest or duty conflicts with their duty to the company reside under these overarching duties.

Corporations legislation, in Australia and other common law countries, is very clear as to the division of responsibilities in companies. The business of a company is to be managed by or under the direction of a board of directors appointed by and accountable to the shareholders, and the directors exercise all powers of a company except those that are required to be exercised in a general meeting (s 198A of the *Corporations Act 2001* (Cth)) (the Corporations Act).

At no point has corporations legislation either here or overseas contemplated shareholder participation in the management of listed and broadly held companies on a day-to-day basis. That is, corporations legislation recognises that it would be impractical for shareholders to be involved in every decision. Indeed, it would paralyse a company if each decision had to go before shareholders. This is also recognised at common law: see *National Roads & Motorists Assn v Parker (1986)* 6 NSWLR 517

Equally, corporations legislation recognises that mechanisms are required for the review of decisions taken by directors. As part-owners, shareholders should be engaged in the corporate governance of companies. They should engage with companies on long-term strategic and governance issues to provide a real test to the thinking and behaviour of boards and management, and to ensure that boards properly oversee management.

Corporations legislation recognises the role that directors play as agents for shareholders, with their fiduciary duties to act in the best interests of the company as a whole encompassed by statute and common law. Directors have responsibility to take decisions concerning the company on a wide range of matters, and shareholders should continue to have the capacity to hold directors accountable for their decisions affecting the performance of a company.

Australia has a set of robust shareholder rights, including the right to remove directors at the AGM should board decision making be found to be unsatisfactory; the right to vote in an advisory capacity on the remuneration-report resolution; and the right to spill the board should the board's decision-making on remuneration prove unsatisfactory over two years.

While CSA did not support the introduction of the two-strikes rule in legislation, CSA Members acknowledge that its introduction has led to greater shareholder engagement. Those companies that received a first strike in 2011 engaged with their shareholders on remuneration, with decisions taken to forego bonuses, salary increases, adjust performance hurdles (both short-term and long-term) and make changes to the cash components of executive pay. The vast majority of those companies did not receive a second strike in the 2012 AGM season — that is, the outliers were brought into the fold in terms of shareholder engagement. Nine companies (as at the beginning of December) had received a second strike — given there are 2,200+ companies listed on ASX, this constitutes a mere 0.004 per cent of listed companies that have not, from the shareholders' perspective, engaged sufficiently.

However, CSA is aware that not all first and second strikes related to remuneration, with some second strikes against the remuneration report being an expression of general dissatisfaction with the company's performance, other aspects of board decision-making and even to provide pressure on incumbent boards facing a potential takeover bid. Notwithstanding this unintended (by the legislator) use of the vote, CSA Members are of the view that the two-strikes rule has provided a strong incentive for companies to do a better job of engaging with their shareholders. This of itself is a good governance outcome.

Corporate behaviour has already been modified in response to investors engaging with boards and discussing matters of concern. The current arrangements have provided greater transparency for investors, and this in turn means fewer surprises and more opportunities for dialogue and engagement.

Companies will make choices as to how best to engage with shareholders based on a number of factors. However, we note that it is accepted best practice for the chair of the board and the chair of key board committees to meet and engage with investors.

CSA therefore does not see the need for either further legislative reform or additional ASX Corporate Governance Council guidance on the role of the board or board committees and their

chairs as it relates to engagement with institutional/retail shareholders throughout the year, including leading up to the AGM. There is strong investor support for the 'if not, why not' regime of the ASX Corporate Governance Council's guidelines, specifically because it assists investors to understand board decision making about governance arrangements. However, this is different from using the Principles and Recommendations to suggest that one particular form of engagement is preferable to another.

CSA is of the view that market practice is evolving, and should be allowed to continue to evolve. Bodies such as CSA develop and will continue to develop guidance on best practice in shareholder engagement, which itself continues to evolve.

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **the role of institutional shareholders throughout the year, including leading up to the AGM. In this context:**
  - **is there a problem with having a peak AGM season and, if so, how might this**
- **matter be resolved**
  - **should at least some institutional shareholders be required or encouraged to report on the nature and level of their engagement with the companies in which they invest, in the manner provided for in the UK Stewardship Code or otherwise**

Effective investor stewardship, including effective shareholder engagement with the companies in which they invest, is central to good corporate governance.

As with the decisions taken by boards as to how best and when to engage with shareholders, best practice investor stewardship is also a work in progress.

However, investors are not homogenous. Shareholders today are a diverse group, dispersed geographically (including internationally) and, in many large companies, can number in the thousands, if not the millions. With dynamic and global investment strategies, shareholders may include an individual resident in Australia planning for his or her retirement, a large institution with billions of dollars under management, a foreign investor, a global hedge fund, and an investor with no interest in the company beyond a short-term trade. The traditional retail investor in Australian equities may represent a small proportion of the capital of a large ASX-listed company. Investors now have many different financial and other interests in companies and are not necessarily long-term investors (they can be less than 24-hour investors, never actually appearing on the share register). The concept of the community of shareholders known both to each other and the directors is no longer operative.

Not all investors wish to engage with the companies in which they invest. The investors who are most interested in engagement are those with long-term investment interests in the companies in which they invest. In Australia, many companies seek to meet their largest long-term investors at least annually as a matter of routine to review strategy, governance and related matters.

CSA believes it is important to look at the overall interaction a company has with its shareholders when considering shareholder engagement. For example, results announcements, analysts' briefings, investor roadshows, 'investor days' (or shareholder briefings), the AGM and other forms of communication all form part of engaging with shareholders. There is a range of options available to companies to communicate with their shareholders and, to a lesser extent, for shareholders to communicate with the companies in which they invest.

CSA considers that shareholders are seeking satisfactory performance from the companies in which they invest and, to the extent it is linked to performance, good governance. Shareholder engagement is a means for shareholders to achieve this end, not an end in itself. On this basis, CSA believes that companies need to review their communication with shareholders and analyse which forms of communication work and why. Companies and shareholders alike need to understand and clearly articulate the objectives they are hoping to attain through enhanced shareholder engagement.

The peak season

The AGM/proxy advisory process occurs annually.

- Issuers release their annual results, including the directors' report and the remuneration report.
- Issuers send the notice of meeting and annual report to shareholders.
- Institutional investors and proxy advisory services consider the proposed resolutions and other governance issues to be voted on at the AGM or other general meeting.
- Proxy advisory services dispatch their report on issuers, including recommendations on how to vote on proposed resolutions, to their institutional investor clients up to 18 to 20 days in advance of the AGM. Some proxy advisory services subsequently make a copy of the report available to the issuer.
- Institutional shareholders vote prior to the AGM. The complications of the proxy voting mechanisms in Australia mean that offshore and domestic institutional investors must vote well in advance of the AGM in order for their vote to arrive by the 48-hour cut-off.
- The AGM is held and the results of voting are announced.

The current requirements under the Corporations Act in relation to the release of the results and the general meeting are:

- lodgement of accounts with the Australian Securities and Investments Commission (ASIC) three months after the end of the company's financial year for listed public companies and disclosing entities
- public companies must hold an AGM once a year no later than five months after the end of the company's financial year
- a minimum of 28 days' notice for a shareholders' meeting for listed companies.

In practice, this means that for the vast majority of listed companies (those with a 30 June balance date) the results are issued at the end of August and the AGM is held on a day in the two-month period from October to December. With the majority of companies' end of financial year coinciding, this results in the majority of AGMs occurring within the same two-month period of the year. This introduces constraints into the system, as multiple annual reports and notices of meeting are issued at much the same time, requiring analysis by institutional investors and proxy advisory services within a very tight time frame. This period takes place from mid-September to mid-November. This is referred to as the 'peak period'.

When institutional investors and proxy advisory services wish to enter into a dialogue with issuers in relation to information in the annual report or proposed items of business in the notice of meeting, time is constrained due to the process for lodging proxies that involves a 'chain of hands'. International institutional investors need to lodge votes 18 to 20 days before the meeting to ensure that it will make its way through the chain of custodians and end up with the nominee in Australia in time to meet statutory deadlines for the lodgement of proxies. In turn, this means that the standard cut-off date for dialogue between issuers and institutional investors and proxy advisory services is more than 20 days before the general meeting, with a drop-dead date of 14 days before the meeting. When notices of meeting are issued no later than 28 days prior to the AGM as required by the Corporations Act, this can leave a very narrow window of time in which communication can take place.

With discussion between an issuer and institutional investor or proxy advisory service needing to take place 18 to 20 days before the AGM, in order for any dialogue to be productive, particularly in relation to issues of proposed items of business at the general meeting, any communication needs to take place very soon after the notice of meeting goes out.

Governance advisers, proxy advisory services and institutional investors note that the companies that receive shareholder approval of their decisions concerning remuneration plans and structures engage their investors early, providing a context and rationale for their decisions. Conversely, companies that struggle to achieve shareholder approval often leave communication to the last minute, providing no time for dialogue, or they do not conduct a dialogue at all.

Some issuers are now providing more than 28 days' notice of the meeting, which reduces the bottleneck of the peak period and encourages productive communication. The issue of a notice of meeting as early as possible does need to take account of the requirement to wait for the close of nominations for directors. CSA does not, therefore, recommend any legislative reform on this front.

CSA Members note that companies can enter into a dialogue with institutional investors (and proxy advisory services) outside the peak period. CSA conducts research into the governance practices of the ASX top 200 companies biennially. The results of the 2011 survey were issued in the 2012 report, *Benchmarking Governance in Practice in Australia*. New questions in the 2011 survey sought to discover more about the engagement process which companies are undertaking prior to the AGM. These questions looked at engagement with institutional shareholders, proxy advisory firms acting on behalf of institutional investors and the Australian Shareholders' Association acting on behalf of retail shareholders.

The 2012 report shows that, of the ASX top 200:

- 90 per cent of companies engaged with institutional investors
- 78 per cent engaged with proxy advisory firms
- 86 per cent engaged with the Australian Shareholders' Association.

The results suggest that many companies still do not fully comprehend when they need to engage. Only 22 per cent of companies reported engaging before the issue of the notice of meeting for the AGM, with 78 per cent of the ASX top 200 engaging after the issue of the notice of meeting. Investors and proxy advisory firms have indicated that engaging after the issue of the notice of meeting will frequently be too late to address any concerns that they may have or otherwise give investors sufficient comfort that their issues are being taken into account.

However, CSA Members are strongly of the view that an educational process is underway, whereby market practice is evolving, as companies and boards learn from their investors that engagement needs to take place over the investing year and not just after the release of the notice of meeting. CSA is of the view that neither legislation nor additional ASX Corporate Governance Council guidance is required to drive this evolving market practice.

Stewardship Code

The exercise by institutional investors of the voting right attached to the shareholding represents the most visible tool available to them to exert influence over the governance practices of companies in which they invest.

CSA Members note that institutional investors need to clarify responsibility for engagement with companies within their organisations. For example, the governance team and the investment team within institutional investor groups do not always work together. Companies may engage with the governance team while the investment team is busy selling the stock, or companies may engage with the investment team and only too late realise that they have no participation in

the decision on how to vote. Moreover, companies can receive mixed signals from the governance staff and the investment staff. This can lead to unexpected outcomes when voting results are tabulated.

Institutional investors need to ensure that there is good communication between their governance and investment teams, and also ensure that companies have clarity as to who to engage with, and who will make the voting decisions.

CSA firmly believes that institutional shareholders should not be required by legislation to vote, or required to disclose by legislation how they vote on individual companies. A decision to abstain from voting on a matter, which may result in no proxy form being lodged and no attendance at a meeting, may be in accord with an investor consideration or policy. Some institutional investors have decided not to vote on director elections, but to sell the stock if they do not agree with the board's decisions.

CSA Members strongly encourage institutional shareholders to develop policies on voting, and disclose those policies to their members, and notes that their industry bodies can have requirements for members in this regard. The Financial Services Council (FSC), representing retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and Public Trustees (funds under management of $1.8 trillion) is proposing a revised proxy voting Standard (mandatory for all members) requiring members to:

- maintain and disclose a complete proxy voting record to members (including abstentions) on Australian-listed entities' company resolutions (so reporting on an individual meeting basis rather than an aggregate basis)
- formulate and maintain a voting policy, accessible to members, and
- disclose the engagement of proxy advisers.

The Stewardship Code was introduced in the United Kingdom following the global financial crisis, when it was suggested that institutional investors had 'been asleep at the wheel'. The argument was tendered that shareholders had insufficiently engaged with companies to test directors' thinking and decision-making, and that this had contributed to the poor financial outcomes experienced by many UK listed entities.

Australian companies weathered the global financial crisis much better than their UK counterparts. There was no discussion in Australia as to shareholders having failed to challenge the boards of Australian listed entities. Indeed, rather than a discussion ensuing in Australia (as it did in Europe and the UK) that shareholder rights might be curtailed, additional shareholder rights were granted in Australia.

For these reasons, CSA is of the view that a Stewardship Code may not be required in Australia. CSA Members believe that best practice guidelines developed jointly between companies and investors may enhance shareholder engagement more fruitfully and productively than a Stewardship Code. It is also the long-term investors who wish to be good stewards over time who will engage in the development of such guidelines.

We note that the Productivity Commission, in its 2010 report on executive remuneration, recommended that any codes on investor stewardship should be voluntary codes developed by industry bodies. As both the FSC and ACSI have developed such codes, CSA sees no need for regulatory intervention. We query why regulation would be required for an industry that is already regulating itself well.

CSA also notes that the ASX Corporate Governance Council will be consulting on changes to the Principles and Recommendations in 2013, including revisions to Principle 6 on respecting

the rights of shareholders. It is likely that revisions will address shareholder engagement more comprehensively than at present.

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **corporate briefings**

At present, the continuous disclosure provisions (s 674) of the Corporations Act and the requirement under Listing Rule 3.1 to disclose any information that is material and price-sensitive are in place to keep the investing public informed of events and circumstances that could affect the price or value of a company's securities. Continuous disclosure regulation is designed to ensure that investors have timely and equal access to price-sensitive information in relation to traded securities.

Any information, therefore, that could have a material impact on the price of the company's shares that is disclosed in a company briefing, be it private or public, *must* be disclosed by a company to the market immediately.

CSA notes that webcasting information provided in a public or private briefing could be an effective way of expeditiously disclosing such information, regardless of whether it is price-sensitive or not (subject, of course, to the Listing Rule requirement that price-sensitive information is first lodged with the ASX).. CSA encourages all companies to provide either a live webcast or an archive of a private or public briefing, to ensure a large range of shareholders have access to the information. However, webcasting should not be mandated, as CSA notes that issues of cost may prevent companies from taking up webcasting at this point in time, and forcing additional costs on companies affects shareholder value. Webcasting of public and private briefings is best practice for large companies with large shareholder bases, and such companies are more able to sustain the costs attached to webcasting.

CSA believes in the general principle of ensuring that there is no restriction on access to information provided by a company, but does not see a role for further regulation in this area. For example, CSA has previously called for the media briefings that follow company AGMs to be open to all shareholders.

CSA was also a strong supporter of the 2010 amendments to Principle 6 of the Principles and Recommendations encouraging companies to provide access to any briefing of analysts, by, for example, telephone, to ensure shareholders have access to the information provided at such briefings. In large part, such access dispels the mystique attached to such briefings and reduces the misperception that analysts are granted access to information that is withheld from shareholders.

CSA notes that some analysts raised concerns at the time of the amendments to Principle 6 that their intellectual property rights could be infringed by making analysts' briefings available to all shareholders. While CSA notes that analysts' questions are likely to be more sophisticated than those asked by retail shareholders, any response from the company that contains information that is material and price-sensitive must be disclosed to all investors. Selective disclosure cannot be justified on the basis of sophisticated questions being posed to a company.

We note that many companies now provide retail shareholder access to corporate briefings. We do not recommend that the provision of such access be mandated. This is a matter for evolving market practice.

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **the role of proxy advisers, including:**
  - **standards for investors using proxy advisers, including the extent to which these investors should be entitled to rely on the advice of proxy advisers in making voting decisions, or, alternatively, whether those investors should have some obligation to bring an independent mind to bear on these matters.**
  - **standards for proxy advisers**

Proxy advisory services play an important role in promoting good governance in Australian entities by undertaking a research, assessment and advisory role. They evaluate the numerous resolutions proposed by entities and make recommendations to institutional investors on how to vote on these resolutions.

Australian institutional investors generally hold positions in hundreds of listed Australian companies. Often they do not have the 'in-house' capability or resources to conduct independent research about each agenda item for each company's ballot at general meetings, including the AGM. Proxy advisory services analyse publicly available information about entities in order to provide independent advice to institutional investors about the governance practices of those entities. In Australia, some proxy advisory services also enter into a dialogue with issuers to better understand and assess their governance practices, in order to provide better quality advice to institutional shareholders.

Where they have a mandate or ability to do so, institutional investors take seriously their responsibility to vote their shares on resolutions put to members at general meeting and consider the governance of the entities in which they invest. Superannuation funds and fund managers are required to assess agenda items with care and caution, and exercise their votes in a manner consistent with their fiduciary duties. Even the best-resourced funds require quality, independent information gathered by proxy advisory services. Accessing quality, independent information in relation to a range of issues assists institutional investors to discharge their voting responsibilities. Such information, which includes recommendations on voting on proposals to be put to shareholders, may have a material effect on voting results.

Some entities have expressed a concern that proxy advisory services 'control' the votes of their clients. However, institutional investors that have a mandate or ability to vote have an obligation to make their own decisions and vote accordingly. Yet proxy advisory services do wield influence — the recommendations put forward by proxy advisory services will be attended to by those who commissioned the research. In some instances, investors may be reluctant to vote against the recommendations of proxy advisory services.

However, while the proxy advisory services concentrate on the provision of independent research and advice, it is the institutional investors who seek engagement with the company and who may seek changes in the governance practices of the entities in which they invest. They may use the research and advice received from proxy advisory services to develop their engagement with companies, but CSA is of the view that the great majority of institutional investors make their own decisions on how they want to vote.

We also note that there is a move towards more institutional investors developing in-house resources to analyse governance practices within the companies in which they invest. The independent research and advice provided by proxy advisory services then becomes just one more piece of information in their ongoing research and analysis. CSA is of the view that where possible long-term institutional investors should be encouraged to develop such resources in-house.

CSA is strongly of the view that proxy advisory services are an important connection between institutional investors and the entities in which they invest. They provide a commercial, independent research capacity. Proxy advisory services in Australia are not subject to the conflicts of interest that bedevil their counterparts overseas, and CSA sees no need for a regulatory framework to be attached to the provision of their services. Institutional investors are free to engage their services or not, and free to heed their voting recommendations or not.

Notwithstanding this, CSA does recommend that proxy advisory services should disclose on their website their own voting and governance guidelines and any changes to those guidelines. Any changes should be updated immediately, so that investors and companies have access to the current guidelines against which governance practice is being judged. This could form part of the best practice shareholder engagement guidelines rather than being mandated in legislation.

Could greater use be made of technology to promote shareholder engagement outside the AGM and, if so, how?

CSA strongly recommends that the Corporations Act embraces technology, by moving to an opt-in system for receiving hard copy meetings materials. A company would be required to announce to the ASX (and then place on its website in a clearly defined section):

- when the AGM will be held (as is currently the case, prior to the expiration date of an individual's right to nominate an external director)
- when the annual report and meeting materials are available online and how to access them and vote online. Shareholders who have provided their email address to a company and provided consent for electronic communication could be notified of this (as is currently the case).

The United Kingdom has moved to a joint opt-in framework for the combined release of the annual report and notice of meeting — we have the precedent in another jurisdiction that an opt-in system for receiving hard copy meetings materials works. With hindsight, when Australia moved to an opt-in legislative framework for receiving hard copies of the annual report, it was probably a missed opportunity that we did not also move to an opt-in for hard copy meetings materials simultaneously.

Should there be an amendment to the right of 100 members to call a general meeting of a company?

CSA has advocated for many years on the need to repeal s 249D allowing 100 members to requisition general meetings of companies (the 100 member rule). CSA welcomed the release of the Corporations Amendment Bill (No 2) 2005, which proposed the repeal of this provision. The Parliamentary Joint Committee on Corporate and Financial Services' held an inquiry into the bill and in its report, *Inquiry into the Exposure Draft of the Corporations Amendment Bill (No 2) 2005*, recommended reform. The report noted that while there is little history of the rule being abused, its potential for abuse remains clear. The reform was again introduced in 2006 in the Corporations Amendment Bill (No 1) 2006.

CSA's support for the proposal in the Corporations Amendment Bill (No 2) 2005 and the Corporations Amendment Bill (No 1) 2006 for removing the 100-member rule in s 249D of the Corporations Act for calling a special general meeting and maintaining the requirement for five per cent of the votes that may be cast at the general meeting is based on the following reasons:

- We are opposed to the vexatious use of the 100 member rule in s 249D to call an EGM at substantial cost to the company, and therefore its shareholders, when:
    - the avenue remains open of raising the issue of concern by placing a resolution on the agenda of the AGM and having statements relating to that resolution

distributed to members at the cost of the company through the utilisation of ss 249N(1)(b) and 249P(1)(b), and
    - it has been noted by those who have called an EGM that it is not expected that the resolutions put forward at the EGM will carry. To put corporations and their shareholders, the majority of whom are not expected to support the resolutions put forward at an EGM, to the expense of the meeting, is mischievous.
- It prevents mischief — given that while there is little history of the rule being abused, in its report, the Parliamentary Joint Committee on Corporate and Financial Services clearly noted its potential for abuse remains clear. It has been suggested by some commentators that, as the 100 member rule has not been greatly used, it no longer requires reform, but the threat of calling an EGM by splitting 100 shares, giving people one share each, then calling a meeting between annual meetings, toys with the company's profit and, consequently, the share price and dividend stream. Thus, it is shareholder return that is being threatened when the threat to invoke s 249D (the 100 member rule) is made. CSA is aware of special interest groups that have built up a database of general supporters/shareholders where they could get 100 members at short notice, and they have indicated to a number of companies that they will use this. The issues they raise are not shareholder issues, but special interest group issues. Both political parties have noted when proposals for reform were released that it is not necessary for parliament to wait until some quota of abuses is observed before reforming the provision.
- Requiring five per cent of total voting shares to requisition a special general meeting is a reasonable balance of the rights of shareholders to have matters addressed with the importance of allowing directors to effectively run the company and is in line with overseas practice.
- It brings Australian law into line with overseas practice. Comparable jurisdictions employ a percentage test for shareholder-requisitioned general meetings:
    - United Kingdom 10%
    - USA 10%
    - Canada 5%
    - New Zealand 5%
    - European jurisdictions between 5% and 20%
- The retention of ss 249N(1)(b) and 249P(2)(b) preserve the rights of members to use a 100-member test to put a resolution on the agenda of the AGM and request the company to distribute a statement to all its members. These provisions protect the rights of small groups of members to have their concerns addressed. This shareholder right is of particular importance to retail shareholders, who, unlike institutional investors, do not necessarily have the opportunity to meet with the company prior to the AGM. As noted above, most resolutions put forward on the AGM agenda, through the use of the 100 member rule in ss 249N(1)(b) and 249P(2)(b) have not been carried. However, the debate generated by such resolutions has been central to shareholder engagement with corporations, and we support this. Our support for the repeal of the 100-member rule only applies to the calling of special meetings.
- The amendments proposed in the bill are expressed to apply only to companies and not to managed investment schemes which since 1998 have been subject to the same requirements under s 252B of the Corporations Act. The 100-member rule should also be removed from this section.
- It avoids the complications of the tiered solutions (such as the square root rule) that have been recommended from time to time. This will ensure that neither companies nor shareholders suffer additional costs.

At the time that the Corporations Amendment Bill (No 2) 2005 was released, it had bipartisan support. However, various state governments stated they would not support the amendment to the Corporations Act as set out in the bill. They noted they were concerned that the repeal of the 100-member rule will work against the interests of minority shareholders, constituting the

general public. However, the 2005 report of the Parliamentary Joint Committee on Corporations and Financial Services clearly notes that the reform encourages appropriate shareholder participation in corporate governance, while reducing the associated costs of such participation, especially when meetings are called or threatened to be called for frivolous or vexatious reasons.

The annual report

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **do the current reporting requirements produce any unnecessary information ('clutter') in annual reports and, if so, how might this be reduced?**

One of the key barriers to effective shareholder engagement, particularly for retail shareholders, is information overload. It is not unusual for the statutory annual reports of large listed companies to run to 300 pages or more of detailed financial and accounting disclosures which are largely impenetrable to the lay reader.

CSA strongly supports the simplification of reporting requirements. CSA believes that the aim of reporting should be to ensure that shareholders want to and can read the disclosures, and remain knowledgeable about the entity they invest in and engaged. However, given the reluctance of governments to review and reduce existing legislation, the challenges inherent in streamlining existing reporting obligations are considerable.

For example, CSA notes that the concise report was originally introduced into the Corporations Act to facilitate shareholder communication, but it was added to existing regulation rather than being introduced to replace existing regulation. Additional statutory requirements were added to the concise report, which saw it increase dramatically in length, such that it no longer met the needs of shareholders. The increased length of concise reports and the recognition by companies that the majority of shareholders want only specific and very concise information has led some companies to seek additional means of communication with their shareholders, such as introducing short-form non-statutory financial reports.

The high success of such initiatives highlights that any regulatory reform in relation to annual reports has the potential to lead to further regulatory information overload, rather than meeting the information needs of shareholders. CSA notes that a 'one-size-fits-all' approach to the annual and concise report clearly shows that regulating one model does not meet the differing needs of shareholders.

CSA strongly supports short-form reports to shareholders, but recommends that:

- companies be left to communicate directly with their shareholders as to what form of non-statutory reports shareholders would like to receive
- such short-form reports remain non-statutory.

CSA also recommends a holistic review of the different pieces of legislation and the Accounting Standards aimed at:

- deleting duplication
- reducing reporting requirements to ensure more simple, effective reporting.

Importantly, CSA recommends that any reform consider, review and report on the impact of any planned reform of the existing legislative and regulatory framework. Adding layer upon layer of further legislation or regulations on companies is not streamlining or clarifying reporting and disclosure.

Integrated reporting

We note that while there is significant global interest in integrated reporting, it is not expected to reduce the 'clutter' at present. It will sit alongside existing annual reporting, although its long-term aim is to replace it. However, a holistic review could facilitate one of the aims of integrated reporting which is to reduce the 'clutter'.

CSA supports the premise integrated reporting and its long-term aim. However, we are strongly of the view that it is premature to either legislate it, mandate a listing rule requirement or include it as a reporting trigger in the Principles and Recommendations.

We note that the Prototype Framework was released on 26 November 2012 as an interim step intended to demonstrate progress towards defining key concepts and principles that underpin integrated reporting. This is not a formal consultation but stakeholders can comment on the prototype. A formal Consultation Draft of the framework will be released in April 2013 for public feedback, and it is intended that a final version (Version 1.0) will be released in December 2013. Clearly, until such time as there is a final version it is premature to in any way mandate integrated reporting.

CSA is of the view that integrated reporting is really integrated thinking — the benefits come from companies looking inward and changing their approach to disclosure. An integrated reporting framework helps to break down silos between teams and leads to better connected departments. It is really a change management process, with the integrated report the outcome of that change management process, rather than the process itself.

CSA also notes that three Australian companies participated in the pilot program (NAB, Stockland and mecu Bank) and there will be great interest from other Australian companies in the reports they have developed as part of the pilot. We are aware of a number of other Australian companies that have voluntarily undertaken an integrated report and we expect to see more companies move in this direction. CSA believes it is more useful to the ongoing development and uptake of integrated reporting for companies:

- to review these first reports
- start a dialogue with those within the three pilot program companies as to any lessons they learnt in the process
- form Steering Committees internally to put integrated reporting on the agenda
- begin the process internally of bringing together disparate groups in silos to start talking about how integrated thinking might work within the company.

Allowing this process to unfold organically within each company is likely to be far more productive in terms of engaging 'hearts and minds' than any regulatory requirement being imposed on companies, which will inevitably be viewed as a compliance exercise in the face of 'one more report'.

CSA also notes that the International Integrated Reporting Council has noted that director liability in relation to forward-looking statements in reports is a much bigger issue in Australia than in other jurisdictions, given the lack of a safe harbour provision.[6] Directors and officers are subject to extensive liability under various sections of the Corporations Act and under myriad other state and territory legislation. Australia also has an unregulated class action industry.

The existing statutory business judgement rule is too narrow, as it is only applicable to one section of the Corporations Act. CSA recommends that either a broader business judgement rule or a specific safe harbour from liability for such disclosures should be introduced. Other jurisdictions, such as the UK, have a specific safe harbour from liability for such disclosures.

---

[6] Damon Kitney, 'Director liabilities cloud reporting scheme', *The Australian*, 5 December 2012

CSA is of the view that a broader business judgment rule or a safe harbour in the Corporations Act would ameliorate the concerns held towards integrated reporting, allowing it to flourish.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **should the reporting requirements be redesigned in any respect, including along any of the lines adopted, or under consideration, in overseas jurisdictions, such as having a strategic report and an annual directors' statement**

CSA notes that extensive consultation has taken place in the UK on narrative reporting and reporting requirements generally. While CSA Members note that any companies listed in different jurisdictions should not be obliged to comply with multiple conflicting obligations, appropriate consultation with Australian stakeholders should occur before any reform from another jurisdiction is introduced in Australia.

Moreover, any reform to annual reporting requirements could hinder evolving market practice in relation to integrated reporting by introducing new obligations.

Importantly, CSA recommends that any reform consider, review and report on the impact of any planned reform of the existing legislative and regulatory framework. Adding layer upon layer of further legislation or regulations on companies is not streamlining or clarifying reporting and disclosure.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **what, if any, issues of liability might arise in the event of changes to the reporting requirements, particularly in relation to forward-looking statements, and how might this matter be dealt with**

Directors and officers are subject to extensive liability under various sections of the Corporations Act and under myriad other state and territory legislation. Australia also has an unregulated class action industry. The existing statutory business judgement rule is too narrow, as it is only applicable to one section of the Corporations Act. A broader business judgement rule should be introduced. Other jurisdictions, such as the UK, have a specific safe harbour from liability for forward-looking disclosures.

CSA recommends that the introduction of a broader business judgment rule would be useful in relation to developments in integrated reporting and directors making forward-looking statements.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **how might technology best be employed to increase the accessibility of annual reports**

The provision of information to shareholders electronically has found favour with shareholders. For example, the 2007 amendments to the Corporations Act to allow companies to elect to distribute annual reports by making them available on their websites ensures that shareholders have access to as much or as little information as they require. The amendments provided shareholders with greater flexibility as to what information they wish to review, given that the information needs can differ substantially between individual shareholders and groups of shareholders (such as retail and institutional shareholders). CSA Members report that 10 per cent or less of shareholders across a variety of organisations now request the annual report in hard copy.

In similar fashion, CSA advocated for a change to the Australian Securities Exchange (ASX), ASX Listing Rules requirement relating to the provision of an independent expert's report to shareholders when a shareholder resolution on a corporate transaction is required. CSA recommended to the ASX that Listing Rule 10.10.2 be amended to require that companies ensure the full independent expert's report is available on the company's website and easily accessible, and provide a hard copy of the full independent expert's report, free of charge, to any shareholder upon request. ASX has since amended the Listing Rules to effect this change.

Similarly, CSA recommends that a summary of key items in the remuneration report could be published in the annual report with the full remuneration report being available on the website.

CSA believes that generic information which is applicable to all shareholders (for example, annual reports, ASX announcements, independent experts' reports) should be available on the company's website with a hard copy available to any shareholder, free of charge, on request.

However, CSA does not see the need for any legislative amendment to enable the provision of information to shareholders through the use of technology. CSA would be very concerned that any legislative provisions concerning technology could be out-of-date before enacted, and could hinder evolving technological capacity and innovations in market practice.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **what, if any, initiatives might be introduced to cater for future innovations in reporting (for instance, would it be beneficial to establish the equivalent of a Financial Reporting Laboratory)?**

As identified by the Australian Financial Reporting Council's (FRC's) Task Force on Managing Complexity in Financial Reporting (2012), the current regulatory framework is not optimal as requirements by different bodies may be duplicative or inconsistent. CSA is also concerned with the manner in which legislators and regulators respond to business and market developments by introducing further statutory requirements in financial and shareholder reporting.

CSA is of the view that the FRC could consider undertaking a project similar to that of the Financial Reporting Laboratory of the FRC (UK) on *A single figure for remuneration*. In the first instance, this body could review existing reporting requirements holistically, with a view to recommending simplification. The work could also extend to exploring, testing and trialling new financial reporting models and concepts (without liability) to enable greater innovation in the market.

The work could extend from reviewing and making recommendations on current reporting requirements in order to simplify them, to making recommendations for future innovations in reporting.

CSA cautions that such a body would need to have a broader base than the current FRC (Australia), which has representatives from accounting, audit and shareholder bodies, but which has no representatives from those charged with the responsibility for narrative reporting, such as company secretaries.

Calling the AGM

Should there be any change to the statutory time frame for holding an AGM?

Please refer to the first part of our submission regarding our ideal proposed solution to this issue.

The information contained in the annual report is already out-of-date by the time the AGM is held, due to the time-lag and the continuous disclosure environment.

Extending the statutory period for holding the AGM could ameliorate the current difficulty of the vast majority of AGMs being held within the period from October to December, although evidence (such as when time frames for financial results were amended in the ASX Listing Rules) suggests that for most smaller companies, AGMs would just be held later. In addition, extending the time frame for holding the AGM will not assist in bringing more shareholders to the meeting under the current statutory framework. As noted above, the AGM deals with historical information, which is already out-of-date by the time the meeting is held. Extending the time frame renders the information dealt with at the AGM very stale indeed.

Providing additional time for the holding of AGMs would only facilitate greater engagement should the current structure of the AGM change, and the general meeting becomes an investor briefing looking forward rather than a meeting looking back (see Part I for our blue-sky ideas on reform to the AGM to provide for such a change).

If the time frame for holding the AGM is reduced, this in turn reduces the time available for all the AGMs to be held. This would put considerable pressure on institutional investors, proxy advisory firms and entities. For example, at present, many entities hold full-year results roadshows in August and September, prior to the AGM being held in October or November. Holding the AGM earlier would reduce the time available for such roadshows.

CSA therefore does not recommend any changes to the statutory time frame for holding an AGM within the current context. However, adjustments could be made to the voting entitlement date vis-à-vis the poll deadline (for example, the voting entitlement date could be a business day or two prior to the poll deadline) to ensure that custodians and other nominees have time in which to finalise and verify the voting instructions of the underlying beneficial holders.

In what respects, if any, might the requirements for information to be included in the notice of meeting for an AGM be supplemented or modified?

CSA Members take a conservative view of the notice of meeting, noting that shareholders require all reasonable information in order to make decisions. CSA Members are of the view that the current requirements meet this need.

CSA Members also note that they have not received any complaints in relation to the notice of meeting, or feedback from shareholders that they are ill-informed due to the requirements relating to the notice of meeting.

CSA recommends that no change be made to the requirements for information to be included in the notice of meeting.

How might technology be used to make this notice more useful to shareholders?

CSA notes that shareholders can currently elect to receive information electronically.

However, CSA recommends that Australia move to an opt-in system for receiving hard copy meetings materials. A company would be required to announce to the ASX (and then place on its website in a clearly defined section):

- when the AGM will be held (as is currently the case, prior to the expiration date of an individual's right to nominate an external director)
- when the annual report and meeting materials are available online and how to access them and vote online. Shareholders who have provided their email address to a company and provided consent for electronic communication could be notified of this (as is currently the case).

The United Kingdom moved to a joint opt-in framework for the combined release of the annual report and notice of meeting — we have the precedent in another jurisdiction that an opt-in system for receiving hard copy meetings materials works. With hindsight, when Australia moved to an opt-in legislative framework for receiving hard copies of the annual report, it was probably a missed opportunity that we did not also move to an opt-in for hard copy meetings materials simultaneously.

Might any other documents usefully be sent with the notice of meeting, and, if so, what?

As noted above, CSA Members have had considerable success with initiatives such as a non-statutory short-form shareholder review. Many more shareholders elect to receive this document than the annual report.

CSA reiterates that when statutory requirements are imposed on such initiatives, they inhibit both the freedom of the entity to explore better ways to engage shareholders with innovative forms of information, and shareholder engagement as they turn away from the documents required by statute. CSA again recommends short-form reports to shareholders, but recommends that:

- companies be left to communicate directly with their shareholders as to what form of non-statutory reports shareholders would like to receive
- such short-form reports remain non-statutory.

Should there be provisions for companies to send information about an AGM directly to the beneficial owners of shares held by nominees and, if so, what type of information?

CSA Members believe that companies should work with custodians and other nominees to foster better relations and communication, and many companies do.

However, in terms of regulatory intervention in this space, companies may only have obligations in respect of the registered shareholder, as the constitution acts as a contract between the company and the shareholder (s 140 of the Corporations Act). To attempt to extend obligations further than this falls outside of privity of contract and, given the breadth of different types of custodians and nominees and the extreme bureaucracy that is the tracing notice regime, this would be unreasonable.

Notwithstanding this, CSA notes with interest the Canadian model, where issuers, and some other entities, ***may*** make available documents concerning the affairs of the issuer, including annual reports, financial statements and other proxy-related material, directly to beneficial owners of the reporting issuer's securities if the beneficial owner does not object to having beneficial ownership information (including that person's contact information and securities holdings) disclosed to the reporting issuer or other entity. The issuer is to be advised on these matters by the nominee registered shareholder, pursuant to the instructions of the beneficial owner to that shareholder. The securities legislation restricts the use of beneficial ownership information to matters relating to the affairs of the reporting issuer.

Should there be any provision for beneficial owners of shares in a company to participate in the AGM of that company and, if so, how?

CSA notes that there is no legal relationship between the company and the beneficial owners. There is a legal relationship between the company and the registered holder. Shareholders choose to structure their holdings in this manner. CSA does not believe that there should be any provision for beneficial owners to participate in the AGM. Other avenues of engagement are open to them for engagement. However, if a company is aware of the relationship, it does have the option of allowing those underlying holders to attend and speak, and this does not require any legal intervention.

Should there be any change to the threshold tests for shareholders placing matters on the agenda of an AGM?

CSA is strongly of the view that there should be no changes to the threshold tests for shareholders placing matters on the agenda of an AGM.

The retention of ss 249N(1)(b) and 249P(2)(b) preserve the rights of members to use a 100-member test to put a resolution on the agenda of the AGM and request the company to distribute a statement to all its members. These provisions protect the rights of small groups of members to have their concerns addressed. This shareholder right is of particular importance to retail shareholders, who, unlike institutional investors, do not necessarily have the opportunity to meet with the company prior to the AGM.

Most resolutions put forward on the AGM agenda, through the use of the 100 member rule in ss 249N(1)(b) and 249P(2)(b) have not been carried. However, the debate generated by such resolutions has been central to shareholder engagement with corporations, and we support this. Our support for the repeal of the 100-member rule only applies to the calling of special meetings.

The majority of companies believe it is important to communicate with special interest groups before the meeting and that, provided the input is cordial and measured, the contribution of special interest groups can be productive. CSA Members recognise that it is important for special interest groups, such as the Australian Shareholders' Association (ASA), to demonstrate to their members that they are actively seeking to further their interests. This may explain why some groups asked questions at the AGM which had apparently been previously discussed with the company before the meeting. For example, the ASA has met privately with many companies before their AGM for a discussion on specific questions. The ASA also used the forum of the AGM to raise some of these issues publicly.

However, CSA notes that the AGM has the potential to be hijacked by special interest groups, with more than 50 per cent of discussion at times being taken up on the one issue, to the vexation of other shareholders. The Corporations Amendment Bill (No 2) 2005 proposed a lowering of the threshold from 100 to 20 for the number of members needed to add a resolution to the agenda of an annual general meeting. CSA Members believe that the reduction of the threshold could see a range of minor, irrelevant, vested issues being included on the agendas of general meetings, which would only serve to make AGMs larger and longer, to the detriment of members and companies.

Granting the capacity to 20 members from special interest groups to weigh down the agenda of an AGM with issues that are of no interest to the majority of members is not an effective means of providing for minority shareholders to examine the affairs of the company and its members. CSA recognises that if an issue is supported by 100 members, it is an issue that rightly deserves to be discussed at an AGM. If it focuses the attention of only 20 members, its

relevance to the greater number of members is far less certain. Similarly the same issues arise in the context of managed investment scheme meetings

Should there be any change to the timing requirements for the calling of an AGM, including for shareholders to place matters on the agenda of an AGM, to seek the circulation of statements concerning any resolution, or to nominate persons for the position of director?

CSA does not recommend any changes to the timing requirements for the calling of an AGM, including for shareholders to place matters on the agenda of an AGM, seek the circulation of statements concerning any resolution or nominate person for the position of director.

While we recognise that institutional shareholders may feel there is insufficient time, given the layering inherent in the holdings of shares through custodians (see our comments earlier on the 'peak season'), we do not believe that adding a few more weeks to the timing requirements for calling an AGM will ameliorate their concerns. Mandating direct voting would have far greater effect, as it would reduce the time currently spent on votes being relayed from the beneficial owner through a layered system of registered holders.

Should companies be required to publish a pre-agenda notice and, if so, what should be the contents and timing of that notice?

CSA does not support any requirement to publish a pre-agenda notice.

Does the current law concerning excluded material either create undue difficulties for shareholders who wish to criticise directors or, conversely, unduly restrict directors in vetting out information to be circulated to shareholders at the company's expense?

CSA does not believe that the current law concerning excluded material creates undue difficulties for shareholders who wish to criticise directors. Companies can receive material from shareholders that they wish to have distributed to all investors in the company, but the material is defamatory. Under the current law, the company cannot distribute defamatory material — nor should it be required to do so. Notwithstanding this, many companies will seek to digest the material received from the shareholder, ensuring that it is no longer defamatory so that it can be distributed. On this basis, it is also clear that the current law concerning excluded material does not unduly restrict directors from vetting out material to be circulated to all shareholders at the company's expense.

Should there be any rule regarding the failure to present a resolution at an AGM?

CSA does not believe that there should be any legislative amendment regarding the failure to present a resolution at an AGM.

Should 100 shareholders contact the company to put a resolution on the agenda of the AGM and validly request the company to distribute a statement to all its members, the Corporations Act obliges the company to fulfil this shareholder right. As stated previously, shareholders have a contractual relationship with each other, the company and the directors and officers and this provides ample scope for remedies.

The right of the company to not present a resolution at an AGM should be preserved, as companies need flexibility to respond to changing circumstances. For example, if a director who is nominated for election or re-election should meet with an accident just prior to the AGM, the company needs the right to withdraw the resolution. At present, if a resolution is withdrawn, any shareholder at the AGM can ask the chair to explain why it was withdrawn.

Should shareholders have greater scope for passing non-binding resolutions at AGMs?

Corporations legislation, in Australia and other common law countries, is very clear as to the division of responsibilities in companies. The business of a company is to be managed by or under the direction of a board of directors appointed by and accountable to the shareholders, and the directors exercise all powers of a company except those that are required to be exercised in a general meeting (s 198A of the Corporations Act 2001 (Cth)) (the Corporations Act).

At no point has corporations legislation either here or overseas contemplated shareholder participation in the management of listed and broadly held companies on a day-to-day basis. That is, corporations legislation recognises that it would be impractical for shareholders to be involved in every decision. Indeed, it would paralyse a company if each decision had to go before shareholders.

Equally, corporations legislation recognises that mechanisms are required for the review of decisions taken by directors. As part-owners, shareholders should be engaged in the corporate governance of companies. They should engage with companies on long-term strategic and governance issues to provide a real test to the thinking and behaviour of boards and management, and to ensure that boards properly oversee management.

Corporations legislation recognises the role that directors play as agents for shareholders, with their fiduciary duties to act in the best interests of the company as a whole encompassed by statute and common law. Directors have responsibility to take decisions concerning the company on a wide range of matters, and decisions on those issues are not taken in isolation. Boards are best placed to take into account the financial and operational circumstances of the company when making decisions about the company.

While CSA notes that the non-binding vote on the remuneration report resolution has enhanced shareholder engagement, it is equally clear that this engagement covers a wide range of topics and is not restricted to remuneration. Hence, further non-binding resolutions would not increase the engagement, but does start to stray into involving shareholders in decision making. Further non-binding resolutions become plebiscites on every decision taken by the directors.

CSA points to the existing shareholder right to remove directors should board decision making be found to be unsatisfactory and the two–strikes rule, which can see shareholders ‘spill’ the board. The ASX Listing Rules require directors to submit themselves to re-election every three years, which also ensures that directors are subject to shareholder scrutiny on a regular basis.

Given these existing shareholder rights, CSA is strongly of the view that it serves no benefit to provide shareholders with greater scope for passing non-binding resolutions at the AGM.

What, if any, additional legislative or best practice procedures should be adopted for companies to seek the views of shareholders on issues they would like discussed at the AGM, or to invite shareholders to submit questions prior to the AGM?

CSA has published a booklet. *Effective AGMs*, which sets out ‘best practice procedures’ in relation to shareholder engagement. One such procedure which is strongly encouraged in the booklet is for companies to call for issues before the AGM. The booklet states:

> An important way in which companies can build engagement with shareholders is to call for questions concerning the management and performance of the company ahead of the AGM. Calling for questions can help identify common themes of shareholder interest and concern. It also obviously helps in preparing suitably informative answers for shareholders. It is useful to include in the call for questions a

> disclaimer that individual responses may not be sent to every question. This can help maintain flexibility in the process.

CSA is of the view that as guidance on 'best practice procedures' already exists there is no need to recommend that further guidance be developed. Moreover, the booklet also notes that:

> Company secretaries, and their colleagues in investor relations where appropriate, should not underestimate the amount of effort which may be involved in collecting, reviewing and preparing answers to the questions received. Before taking up the process of calling for questions from shareholders ahead of the meeting you should ensure that there is high-level management and board buy-in to the process, and agreement on the provision of information and resources to answer them.

CSA also recommends that no additional legislative requirements need be introduced.

Should there be some obligation on the auditor (or the representative of the auditor) to speak at the AGM?

Under s 250PA, shareholders of listed companies are entitled to submit written questions to the auditor on the content of the auditor's report or the conduct of the audit of the annual financial report. Shareholders must give the question to the company not less than five days before the meeting. The company in turn must, as soon as practicable after it receives the question, pass it on to the auditor, even if it believes the question does not relate to a matter about which a shareholder is permitted to question the auditor. Copies of the questions must be made available to shareholders attending the AGM.

CSA notes that this right has almost never been utilised. CSA is extremely doubtful that legislating that an auditor must speak at the AGM will enhance shareholder engagement, given the lack of interest shown by shareholders in questioning the auditor.

Notwithstanding this, CSA also notes that the majority of questions about the accounts are directed at the board at the AGM. The auditor is present and can take questions but should not be obliged to speak.

What, if any, obligations should a company or a company auditor have to answer questions from shareholders?

The provisions of s 250T require the chairman to allow the shareholders a reasonable opportunity to ask questions of the auditor or their representative relevant to:

- the conduct of the audit
- the preparation and content of the auditor's report
- the accounting policies adopted by the company in the preparation of the financial statements and
- the independence of the auditor in relation to the conduct of the audit.

The chairman must also allow the auditor a reasonable opportunity to answer any written questions which have been submitted to the auditor under s 250PA.

Business of the AGM

Should any matter be excluded from or, alternatively, added to the business of the AGM?

CSA does not recommend that any matters be either added to or excluded from the business of the AGM. We note earlier in this submission that the formality of working through the resolutions at an AGM stifles meaningful discussion on company performance and prospects.

We refer to our idea set out in Part I of this submission on delinking the meeting from voting, and thereby encouraging the meeting as a lively forum where shareholders can discuss any matter relating to the company.

What, if any, changes are needed to the current position concerning:

- **the general functions and duties of the chair**
- **the chair ensuring attendance of particular persons at the AGM**
- **the chair moving motions**
- **motions of dissent from a chair's rulings?**

CSA Members are of the view that no changes are required to the current position concerning the role and responsibilities of the chair. Currently, most companies maintain a manual setting out the procedural aspects of the AGM, and the company secretary is on hand to assist the chair at any point, with reference to the manual.

CSA's publication, *Effective AGMs*, states that:

> Joske notes that 'Where there is no specific provision in the Corporations Act 2001, one may refer to the common law of meetings'. The Corporations Act goes into detail on procedural issues only in relation to a few specific items, such as voting on a show of hands and on a poll. There is therefore a large body of meeting practice applicable to AGMs and other company meetings which relies on common law. There are a number of highly regarded and accessible texts such as Joske and Horsley which set out the procedural issues in detail.

CSA has also published *Guide to Procedures at AGMs*, which provides guidance on these and other matters.

We refer back to our 'delinking' idea set out in the first part of this submission. Should that be enacted, the physical meeting aspect of the AGM will be much less formulaic, giving chairs greater flexibility in running the meeting, which should encourage innovation in how the meetings are held, including the increased participation of other directors and senior management, which CSA would support.

Should a chair be obliged to provide shareholders with a reasonable opportunity to discuss a resolution before it is put to the vote?

The scope of the discussion on the resolution before the meeting is currently at the discretion of the chair.

Most chairs will actively canvass shareholder opinion on each resolution before it is put to the vote. However, as noted earlier, debate on resolutions is frequently limited.

CSA Members are of the view that there is insufficient evidence pointing to problems with the current manner of dealing with procedural issues at AGMs and does not recommend change.

Should a chair have the power to impose any time, or other, limits on an individual shareholder speaking at the AGM?

At the moment s 250S provides that the chair of an AGM must allow a reasonable opportunity for the members as a whole at a meeting to ask questions or make comments on the management of the company.

At present, chairs judge the mood of the meeting in terms of judging whether one shareholder may have spoken for too long, or asked the same question multiple times using slightly different language. Chairs will issue warnings and also delegate the authority to security to remove a person should they be disruptive.

Alternatively, another shareholder may be asking questions of merit that other shareholders are interested in and it would not be in shareholders' interests to have the speaker forced to cease speaking.

CSA Members are of the view that the majority of chairs find the balance between affording shareholders a reasonable opportunity to question and comment on resolutions before the meeting, and maintaining sufficient order so that all shareholders can feel that the meeting is being conducted fairly, is not being hijacked by particular people or groups, and is not wasting people's time. CSA Members believe that chairs should retain the right to exercise their judgment in this regard.

CSA's publication, *Effective AGMs*, also recommends that:

> other ways to deal with concerns raised by shareholders with special interests ... include ...ensuring that customer issues do not become meshed with shareholder issues by having information booths available at the meeting where shareholder customers can discuss their issues directly with company representatives.

What changes, if any, should be made to the current requirements concerning:

- **informing shareholders of their right to appoint a proxy**
- **the proxy form**
- **any other aspect of proxy voting.**

CSA is of the view that no changes are needed to the current requirements concerning the proxy form and the other related issues set out above.

The proxy form is already a complex document and now more complex again as a result of the voting exclusions introduced in the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011*. The Act introduced amendments to the Corporations Act (s 250BD) prohibiting key management personnel (KMP) and their closely related parties from voting undirected proxies on remuneration-related resolutions. In addition, the amended Act (ss 250R(4) and 250V(2)) prohibits any KMP (which includes the directors), the details of whose remuneration appears in the remuneration report, and their closely related parties from casting a vote (in any capacity) on a resolution to adopt the remuneration report or a spill resolution.

In conjunction with legal advisers, companies decide how the proxy form will be set out so that shareholders have clarity as to how to appoint a proxy or vote directly; how any voting exclusions operate, and the chair's voting intentions.

CSA notes that:

- it has previously published a best practice proxy form, which was used by both major share registries, and
- has been asked by ASIC to develop a new best practice proxy form to reflect the changes brought in by the two-strikes rule.

CSA refers to the earlier part of this submission where we recommend that direct voting be mandated. This would replace and abolish the current archaic system of proxy voting (which is a transfer of the rights of shareholders to attend and vote to another person), as this is anachronistic and a symbol of a bye-gone age where people had the need to appoint an

individual to attend and vote on their behalf. We have seen many problems with the current system, some of which have required legislative intervention.

Most proxy forms are necessarily highly legalistic and may be difficult for shareholders, particularly retail shareholders, to understand, due to the complexities of the proxy voting system. If shareholders received a direct voting form only, it would consist of a simple form setting out a series of resolutions on which they were asked to vote, but there would be no lengthy and complex explanation, as now, of:

- how the appointment of a proxy works
- the effect of appointing a proxy in relation to any voting exclusions
- the difference between a directed and undirected proxy
- the need to expressly authorise the chair to vote on a shareholder's behalf.

For those shareholders accustomed to placing their faith in the chair by appointing the chair as their undirected proxy, a simple statement on the voting form would indicate the recommendation of the chair in relation to each resolution, but the shareholder would still vote directly.

By replacing the system of proxy voting with direct voting, and mandating direct voting and voting via a poll, the system ensures that the result of all resolutions is the will of the eligible shareholders that voted on them. Voting would be undertaken online as the default with shareholders being given access on request to more traditional means. Shareholders would still retain the right to appoint a representative to attend the meeting and speak on their behalf.

The current problems with lost votes and the complexities of the proxy voting system fall away as institutional shareholders vote directly online.

What changes, if any, should be made to the current requirements concerning:

- **pre-completed proxies**

CSA is of the view that pre-completed proxy forms are not good governance practice generally. However, it is not only the company that can issue a proxy form — a shareholder also has the right to issue a proxy form. Dissenters can use a pre-completed proxy form to seek to gain support for their case.

Notwithstanding this, it is good governance practice for a proxy form to provide shareholders with the ability to vote either 'yes' or 'no' on each resolution or abstain. CSA recommends that pre-completed proxy forms be banned.

What changes, if any, should be made to the current requirements concerning:

- **notifying the company of the proxy appointment**

A company and its board of directors can have an information advantage if legislation stipulates that proxies must be sent either to the company or to any other entity or entities nominated by the company and cannot be sent to a third party who lodges the proxies by the due date. A dissenter could be seeking tactical support in a campaign against the board of directors by seeking to be appointed the proxy of other shareholders. Changing the law to stipulating that only the company or its nominated third party would receive proxies would entrench the power of the company and leave the dissident unaware of whether the campaign seeking support from other shareholders was successful or otherwise.

While CSA Members acknowledge that a company would prefer to know how voting was progressing in any such circumstances, and would also prefer not to have mass proxies lodged at the last minute by a third party, CSA is of the view that the legislation should not thwart any shareholders' attempts to fight an incumbent board or garner support for voting against board-

recommended resolutions. Indeed, CSA points to its own experience when it acted as a third party garnering support from Australian members to vote against a resolution from the UK-dominated International Council ICSA. CSA gathered proxies and lodged them with ICSA en masse by the due date. CSA recommends that the legislation should remain as it currently stands, with a third party having the right to solicit proxies and collect them, but obliged to lodge them with the company by the due date.

Rather than stipulating that only the company or its nominated third party can receive lodged proxy votes, CSA Members recommend that any third party receiving proxy votes be required by law not to cherry pick and be required to lodge all proxies received. Of course, this whole thorny issue goes away in its entirety if direct voting is mandated, as per our earlier proposal.

What changes, if any, should be made to the current requirements concerning:

- **providing an audit trail for lodged proxy votes?**

CSA is of the view that electronic voting will assist in maintaining the integrity of the voting process, as it would provide an audit trail for lodged proxy votes.

It is important to note that online voting is different from so-called electronic voting used by a number of companies where shareholders attending AGMs use handsets to communicate their votes.

CSA also recommends the mandating of direct voting (see our earlier comments). Direct voting provides an audit trail to the shareholder (their vote is confirmed) and also to the company. Regardless of the method of voting, a dissident shareholder may still request a copy of the register to solicit votes.

What changes, if any, should be made to the current requirements concerning:

- **the record date and the proxy appointment date**

CSA agrees that electronic proxy voting and electronic direct voting have major advantages over paper-based proxy voting, both ensuring an audit trail for votes and enabling the maximum cut-off time for lodging proxy appointments to be shortened.

CSA would prefer to see electronic voting develop further than see legislative change introduced to extend the record date to five business days before the meeting. CSA agrees with the Productivity Commission that extending the record date in this manner can cause disadvantages, such as increasing the risk that shareholders who no longer have a substantive interest in the company may vote or shareholders who purchase shares after the record cut-off date are unable to vote.

Notwithstanding this, as we note in Part I of this submission, the voting entitlement date could be a business day or two prior to the poll deadline to ensure that custodians have time in which to finalise and verify the voting instructions of their underlying beneficial holders.

CSA also recommends the mandating of direct voting (see our earlier comments).

What changes, if any, should be made to the current requirements concerning:

- **irrevocable proxies**

CSA is of the view that this is not a requirement that needs to be retained.

What changes, if any, should be made to the current requirements concerning:

- **directed and undirected proxies**

The Corporations Amendment (Proxy Voting) Act 2012 was passed in June 2012 to clarify that the chair of an annual general meeting (AGM) can also vote undirected proxies on the nonbinding resolution to adopt the remuneration report and on a spill resolution where the shareholder provides the chair with express authorisation to do so. That is, the chair is now able to exercise undirected proxies on all remuneration-related resolutions, including the remuneration report and the spill resolutions.

CSA advocated for this change and continues to support it strongly within the current regulatory framework. The majority of undirected proxies that are lodged, particularly by retail shareholders, appoint the chair as their proxy. Their choice to appoint the chair as their proxy to vote on their behalf is a vote of confidence in the chair and the board. Removing their right to appoint the chair as their proxy denied the shareholder the right to exercise their vote, unless they could either physically attend the meeting or appoint another proxy to exercise that right for them. The 2011 AGM season saw two-thirds of retail shareholders' votes lost due to the drafting anomaly that the amendment addresses.

However, in the long run, CSA recommends that direct voting be mandated. Most proxy forms are necessarily highly legalistic and may be difficult for shareholders, particularly retail shareholders, to understand, due to the complexities of the proxy voting system. If shareholders received a direct voting form only, it would consist of a simple form setting out a series of resolutions on which they were asked to vote, but there would be no lengthy and complex explanation, as now, of:

- how the appointment of a proxy works
- the effect of appointing a proxy in relation to any voting exclusions
- the difference between a directed and undirected proxy
- the need to expressly authorise the chair to vote on a shareholder's behalf.

For those shareholders accustomed to placing their faith in the chair by appointing the chair as their undirected proxy, a simple statement on the voting form would indicate the recommendation of the chair in relation to each resolution, but the shareholder would still vote directly.

By replacing the system of proxy voting with direct voting, and by mandating direct voting and voting via a poll, all of these issues become redundant and the system ensures that the result of all resolutions is the will of the eligible shareholders that voted on them. Voting could be undertaken online as well as through more traditional means. Shareholders would still retain the right to appoint a representative to attend the meeting and speak on their behalf.

The current problems with lost votes and the complexities of the proxy voting system fall away as institutional shareholders vote directly online.

What changes, if any, should be made to the current requirements concerning:

- **renting shares**

CSA notes that, depending on the particulars of stock lending arrangements, superannuation funds and managed investment funds are potentially putting at risk the share price when they lend stock, and that investors should be in a position to make their investment decisions in full knowledge of a fund's policy on stock lending. It could be argued that any appointment of an undirected proxy is a form of stock lending.

CSA notes the importance of superannuation to the Australian economy and the retirement incomes of the Australian population. With superannuation a long-term investment, investors

need certainty that stock lending arrangements do not unduly place at risk the value of their investments.

However, there is an economic value attached to shares and shareholders should be able to take advantage of that economic right. CSA is of the view that the policy on stock lending is a matter between the investor and the fund in which they invest and renting shares should not be banned. Moreover, CSA queries how any such ban could be policed, as large institutional shareholders hold stock through custodians.

CSA is of the view that disclosure underpins the Australian market. In order to ensure consistency in the application of the principles of disclosure by all market participants, CSA recommends that superannuation funds and managed investment funds should disclose whether or not they permit stock lending by their investment managers/agents in relation to their investments.

CSA also notes that if enough stock is borrowed to ensure a meaningful interest in the company (which could influence voting outcomes) this would need to be disclosed under a substantial shareholder notice.

What changes, if any, should be made to the current requirements concerning:

- **proxy speaking and voting at the AGM**

CSA Members note that, currently, special interest groups can buy one or two shares across 100 people, to provide them with the right to agitate at meetings on non-shareholder related issues.

CSA recommends that direct voting be mandated. This provides the best means of transparency as to voting at the AGM.

A shareholder would still have the right to appoint a representative to attend a meeting and vote on their behalf.

Direct voting before the meeting

Should direct voting before the meeting be provided for by legislative or other means, and if so what matters should be covered in any regulatory structure?

CSA has been a longstanding supporter of direct voting. We issued a discussion paper in 2006 on direct voting (*Expressing the voice of shareholders: a move to direct voting*) and then issued *CSA's Guide to Implementing Direct Voting in 2007*.

While currently legislative change is not required to effect direct voting, as it can be implemented, in most cases, with only minor changes to the company constitution, CSA strongly recommends that direct voting be mandated. As discussed earlier, direct voting should replace the appointment of a proxy.

CSA is also of the view that an introduction of online voting as the default option for voting will further facilitate direct voting.

CSA recommends that any legislative provision simply mandate direct voting. All matters relating to the rules governing the exercise of direct voting should be a matter for the company to decide. CSA refers to the discussion in Part I of this submission for further comment on the value of mandatory direct voting.

Disclosure of pre-meeting voting

In what circumstances, if any, should access to pre-meeting voting information be permitted?

CSA Members note that directors cannot force any shareholder to vote in a particular way. They engage with shareholders to seek their vote in accordance with recommendations put forward by directors. CSA notes that the majority of votes are received in the final 24 hours.

CSA notes that it is assumed that if directors have access to pre-meeting voting information that it provides them with an unfair advantage. However, CSA Members are of the view that, generally, directors are not given and do not take an unfair advantage by having access to this information. Indeed, CSA Members know of instances where directors have engaged with shareholders yet the vote when it arrives does not tally with the sentiment expressed by the shareholders during the engagement process. When queried, the shareholder discovers that a voting error occurred and rectifies the vote to accord with their intention. For example, proxy platforms can lodge an incorrect vote, although CSA notes that fewer problems of this kind have occurred since online voting was introduced for institutional investors.

CSA Members also note that there could be circumstances where continuous disclosure obligations require companies to disclose pre-meeting voting.

CSA Members understand why shareholders would want access to pre-meeting voting information in contentious situations. We note above why we believe that third parties should be able to solicit proxies, but we do not believe that shareholders should have access to pre-meeting voting other than any proxies they actively solicit. CSA is of the view that access of this kind could be abused by special interest groups, or distorted by the media, where a running commentary could be held as to how the voting was developing, causing changes to voting outcomes based on speculation and mischief rather than any real interest in the integrity of the voting process.

CSA notes that a shareholder holding more than 20 per cent of available shares could have the right to access the pre-meeting voting information and also access the poll results after the meeting. The shareholder would pay the auditor to check the validity of the process.

Alternatively, 100 shareholders could be given the right to access this information.

Without a materiality threshold, the cost could not be justified by the shareholding.

CSA does not support an independent scrutineer being mandated. For large companies, this would be an additional large cost. CSA notes that 99.9 per cent of votes on resolutions are not contentious. CSA also notes that, following the introduction of the two-strikes rule, ASIC reviewed voting at multiple AGMs (in 2011 and 2012) and found there was no problem with the integrity of the voting process. Mandating a scrutineer for the very small percentage of contentious resolutions would be out of proportion to any issue.

CSA recommends that the legislation could provide that a shareholder could ask for a scrutineer to be appointed and pay for such an appointment.

In what manner if any, should access to pre-meeting voting information be regulated before discussion on a proposed resolution?

One argument for disclosing the proxies at the commencement of the discussion is that such disclosure could reveal that, where institutional shareholders have already voted, there may not

be consistent support for a company's position on a particular resolution. This could assist the discussion at the AGM, clarifying which areas of company performance or action require further clarification through questioning of the directors.

However, shareholders, particularly retail shareholders, can feel that disclosure of the pre-meeting voting can stifle discussion. Knowing how the institutional investors have voted can appear to make any contribution of retail shareholders to the discussion meaningless.

CSA believes it would be undesirable to prescribe in legislation whether pre-meeting voting information should be disclosed in advance of a discussion on a particular resolution. CSA recommends that this be left to the discretion of the chair.

In what manner, if any, should the current requirements concerning the disclosure of pre-meeting votes before voting on a resolution be amended?

Currently, the chairman must inform the meeting of how votes lodged by proxy are to be cast before the vote is held (s 250J(1A)). This is a replaceable rule.

The disclosure of proxy votes before the vote is taken may give a company an opportunity to demonstrate transparency in the voting process, and reassure shareholders that there will be a fair result on the resolution being considered. However, some shareholders may feel that any such disclosure stifles debate at the meeting, given that the result of the vote is known in advance. Shareholders can feel intimidated by or resentful of being advised of the outcome of the vote before discussion has taken place. CSA notes that the majority of the major listed companies disclose the pre-meeting voting after discussion for this very reason.

CSA believes it would be undesirable to prescribe in legislation whether pre-meeting voting information should be disclosed in advance of the vote. CSA recommends that this be left to the discretion of the chair.

Should there be legislative or other recognition of online voting during the course of an AGM and, if so, in what respects should this form of voting be regulated?

CSA Members note that online voting is legally enabled and are of the view that market practice will evolve to provide for online voting as the norm.

CSA Members believe that there is a danger of any regulation in this area not keeping pace with technology and thereby stifling the development of online voting and the use of mobile devices and other devices not yet on the market.

CSA Members also believe that any regulation in this area will be difficult given the range of company size in Australia. The large companies have the resources and large shareholder bases to innovate and be leaders in this area. Smaller companies are unlikely to be market leaders in online voting and may find it difficult if it is mandated.

CSA strongly recommends market-led practice in this area and that the law remains conducive to and encouraging of best practice rather than mandating one approach.

Exclusions from voting

Do any issues arise concerning voting exclusions on resolutions that must, or may, be considered at an AGM and, if so, how might those issues best be resolved?

In 2011, ASIC asked CSA to develop *Guidelines on managing voting exclusions on remuneration-related resolutions*. The guidance is available on the CSA website, and is freely available.[7]

The guidance sets out good practices and processes that companies can put in place to manage voting exclusions. However, CSA Members note that the law does not provide companies with any means of certainty that they have complied, given that the voting exclusion is a personal statutory obligation.

Companies can assist by:

- notifying persons that the company considers them to be a member of KMP
- explaining the prohibitions on voting that apply to any remuneration-related resolution being considered at the forthcoming general meeting
- explaining the extended definition of 'closely related party' under the Act and 'associate' under the ASX Listing Rules, as applicable
- explaining the consequences of breaching the prohibitions on voting outlined to them
- asking the members of the KMP to identify to the company each closely related party or associate who may have shares in the company of which they are a KMP, and if known, provide the details of any such shareholdings
- asking the members of the KMP if they own shares through a nominee company or a trust, and if so, to advise in whose name within the nominee company or trust the shares are held (if this not already monitored by the company)
- requesting that the KMP inform their closely related parties and associates (if applicable) of the voting restrictions applicable to them.

A company can also instruct their share registry of what voting exclusions should apply to particular resolutions. Given that not being able to vote their shares due to their relationship with the member of the KMP (no matter how arm's length that relationship may be in real life) will be a new concept to many individuals captured by the new definition of closely related party, and given that nominee companies and trusts may be unfamiliar with having to not vote a particular parcel or parcels of shares, it is of great assistance if the share registry can stop any vote being cast or counted should an invalid instruction to vote be incorrectly placed. Companies may also give consideration to seeking assurances from KMP that they have not (and will not) cast any votes on remuneration-related resolutions other than in accordance with the Act.

The company can establish all these procedures to manage voting exclusions to:

- satisfy itself it has carried out reasonable steps to promote integrity in the voting process
- assist members of the KMP to ensure they do not put themselves at risk of breaching their personal statutory obligations
- reasonably satisfy itself that people have not cast votes other than in accordance with the Act

but it cannot guarantee that beneficial owners have not voted. The link between the custodian and the beneficial owner is not in the control of the company and the company cannot take responsibility for this.

[7] http://www.csaust.com/media/397700/managingvotingexclusions_24jul12.pdf

Notwithstanding this, CSA Members are of the view that there are no significant issues that require legislative change.

Should any changes be made to the current provisions regarding voting by show of hands?

Voting by show of hands is the primary method used where the outcome of the resolution before the meeting is predictable or the resolution is a formal one whose success is not in doubt. A show of hands may also be useful in taking the temperature of the meeting, even if the outcome is not in doubt. At present, voting on a show of hands is frequently referred to by retail shareholders as the only means available to express a position to directors and the Australian Shareholders' Association (ASA) has long expressed a preference for voting in this fashion. However, we note that the ASA is reviewing its policy of preferring a vote on a show of hands.

Given the importance of ensuring that all shareholders are provided with the opportunity to vote on the resolution relating to the remuneration report, with its attendant very serious consequences, it is advisable for the vote on the remuneration-report resolution not to be held on a show of hands, given that the shareholders present at the AGM represent a tiny portion of total shareholders.

Deciding the vote on the remuneration-report resolution by poll is advisable in the interests of transparency and to include the proxy votes that have been lodged prior to the meeting. At present, voting on a show of hands is frequently referred to by retail shareholders as the only means available to express a position to directors. The chair will need to explain to shareholders why the vote is being decided by poll if the company decides this is the preferred method for the remuneration-report resolution (and subsequent spill resolution, if required).

CSA is of the view that no change is required to the current provision regarding voting by a show of hands. Market practice will shift according to need, as it has with the vote on the remuneration-report resolution. Again, we note that the ASA has indicated it is reviewing its policy of preferring a vote on a show of hands.

CSA also notes that, if direct voting is mandated (and conducted electronically) voting will automatically take place on a poll.

Independent verification of votes cast on a poll

What legislative, or other, verification initiatives, if any, should be introduced concerning voting by poll at an AGM?

The chairman is likely to call a poll when they are aware from the proxies received that there may be a different result from voting on a show of hands, including when they are aware that there is a significant negative vote. Actions by ASIC against some companies have indicated that it considers that a chairman would have a duty to call a poll in those circumstances. Significant shareholders would also be likely to call a poll where the combined effect of smaller shareholders voting on a resolution on a show of hands would outweigh the number of larger shareholders present and voting.

CSA Members note that many companies and their registries already have adopted a robust process to manage the processing and counting of proxies received, including excluding any holdings as directed by the company. This process has been rigorously reviewed following the introduction of the two-strikes rule and its attendant voting exclusions.

Some companies, particularly when they have before a meeting decided that a poll on resolutions will be called, will employ an independent third party (sometimes their external

auditors) to scrutineer the work of the share registry. The level of scrutiny should be agreed between the company, the third party and the share registry and may involve random testing of whether voting instructions (either online, by fax or by mail) have been processed properly and that any holdings specified by the company to the share registry as needing to be excluded from voting on particular resolutions have in fact been excluded from voting.

If an external scrutineer is used, the company will usually request them to attend the general meeting to supervise the performance of any poll that is called to ensure that voting instructions are properly carried out. Companies may also disclose that they have appointed an external scrutineer and the details of their role.

CSA is of the view that current market practice as set out above is providing for confidence in the voting process at present. We note that ASIC conducted a review of voting at AGMs in 2011 and again in 2012 to ensure that companies can demonstrate to their shareholders that votes at general meetings are properly conducted. ASIC was satisfied that voting processes did demonstrate proper conduct.

CSA notes that the chair of the meeting also needs to be satisfied that, in declaring the result of a resolution, only those votes that are permitted under the law have been counted.

Should one or more verification requirements apply in all instances or only if, say, a threshold number of shareholders require it?

CSA notes that a shareholder holding more than 20 per cent of available shares could have the right to access the pre-meeting voting information and also access the poll results after the meeting. The shareholder would pay the auditor to check the validity of the process.

Alternatively, 100 shareholders could be given the right to access this information.

Without a materiality threshold, the cost could not be justified by the shareholding.

Disclosure of voting after the AGM

Should any steps be taken to promote more consistency in the disclosure to the market of voting results?

CSA strongly recommends greater consistency in the disclosure to the market of voting results.

CSA recommends the ASX Listing Rules could include a form for the announcement of voting results, which would ensure consistency.

CSA also recommends that the contract with share registries should ensure that the registries produce an automatic form providing the information to companies, so that they can easily fill in the ASX form. The form would provide for the disclosure of the percentage of shares voted for, against and abstained on each resolution, not the number of shares.

Following the AGM, what, if any, rights of access should shareholders generally, or the person proposing a resolution, have to voting documents?

CSA notes that a shareholder holding more than 20 per cent of available shares could have the right to access the pre-meeting voting information and also access the poll results after the meeting. The shareholder would pay the auditor to check the validity of the process.

Alternatively, 100 shareholders could be given the right to access this information.

Without a materiality threshold, the cost could not be justified by the shareholding.

What, if any, changes should be made to the requirements concerning the recording of details of voting in the minutes of the AGM?

CSA does not believe that any changes should be made to the requirements concerning the recording of details of voting in the minutes of the AGM – there is sufficient detail in the requirements of the Corporations Act and it is widely known that AGM minutes are one of least read documents ever.

The preparation of minutes involves professional judgment. Furthermore, if the public data on the ASX Markets Announcements platform is consistent, shareholders have access to the information they need.

Should there be a statutory minimum period for retention of records of voting on resolutions at an AGM and, if so, for what period?

CSA Members recommend that there should be a statutory minimum period of 12 months for retention of records of voting on resolutions at an AGM.

Method of election

Should there be any legislative initiatives in regard to the election of directors, including in relation to:

- **the frequency with which directors should stand for re-election**
- **the right of shareholders to question candidates (and receive answers)**
- **the voting procedure?**

CSA does not believe there should be any legislative requirements introduced in regard to the election of directors.

Market practice is changing in relation to director elections. For example, in the 2012 AGM season, the chairman of Mirvac voluntarily stood for re-election to test shareholder sentiment in regards to the board's decision to dismiss the CEO.

Importantly, it is only the FTSE300 in the UK that have been required to move to annual elections, and then only on an 'if not, why not' basis, under the UK Corporate Governance Code. If annual elections were introduced in Australia (which CSA believes would only be equitable if the two-strikes rule was abolished) then we would recommend that it only apply to the ASX top 300.

We refer you to our *Guide for Procedures at AGMs* in relation to methods of election (as quoted in the discussion paper).

Except as per the first part of this submission, CSA also does not believe that there should be any legislative requirements introduced in regard to

- the right of shareholders to question candidates (and receive answers)
- voting procedures.

Dual-listed companies

Are there any matters concerning dual-listing that should be taken into account in the regulation of AGMs?

Dual-listed companies will often face additional regulatory burden as they are required to comply with more than one set of regulation, which may or may not be very compatible.

Globalisation

Are there any problems in the voting or other aspects of AGMs for overseas holders of shareholding interests in Australian regulated companies?

The main problem is how an overseas holder is noted on the share register. The manner in which the custodian deals with is not in the control of the company and cannot be legislated. The company can only deal with the registered holder. Information flows between the registered holder and the underlying holder are a matter for those parties.

For some or all public companies, should the functions of the AGM be changed in some manner, or the obligation to hold an AGM be abolished?

See our ideas set out in Part I of this submission in relation to changing the functions of an AGM.

As we note in Part I, we strongly support the AGM as a means of shareholder engagement and do not support it being abolished. However, we equally strongly believe that it needs significant reform.

In this context, what technological developments might be taken into account in considering the possible functions of the AGM?

Again, we refer to Part I of this submission, where we set out ideas for the reform of the AGM.

However, even if our ideas for reform of the AGM are not taken up, CSA Members note that the increased use of technology, including webcasting and online direct voting, and online participation in meetings, will assist shareholder engagement.

CSA strongly recommends that the legislative framework encourage the use of technology but not prescribe any particular approach, given the likelihood that the technology could be out-of-date once the legislation is enacted. It is vitally important that any legislation provides companies with the flexibility to use technology to enhance shareholder engagement and innovate as to different means of engaging with shareholders.

Future of the AGM

Please refer to Part I of this submission for our ideas on the future of the AGM.

Appendix A: Recommendations

Shareholder engagement

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **the role of the board collectively as it relates to engagement with institutional/retail shareholders throughout the year, including leading up to the AGM**
- **the role of particular board members, such as the board chair or the chairs of board committees, in relation to engagement with institutional/retail shareholders**
- **any other aspect of shareholder engagement?**

CSA does not recommend either further legislative reform or additional ASX Corporate Governance Council guidance on the role of the board or board committees and their chairs as it relates to engagement with institutional/retail shareholders throughout the year, including leading up to the AGM.

CSA is of the view that market practice is evolving, and should be allowed to continue to evolve. Bodies such as CSA develop and will continue to develop guidance on best practice in shareholder engagement, which itself continues to evolve.

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **the role of institutional shareholders throughout the year, including leading up to the AGM. In this context:**
  - **is there a problem with having a peak AGM season and, if so, how might this**
- **matter be resolved**
  - **should at least some institutional shareholders be required or encouraged to report on the nature and level of their engagement with the companies in which they invest, in the manner provided for in the UK Stewardship Code or otherwise**

CSA Members are strongly of the view that an educational process is underway, whereby market practice is evolving, as companies and boards learn from their investors that engagement needs to take place over the investing year and not just after the release of the notice of meeting. CSA does not recommend either legislation or additional ASX Corporate Governance Council guidance to drive this evolving market practice.

CSA does not recommend a Stewardship Code in Australia. CSA Members believe that best practice guidelines developed jointly between companies and investors may enhance shareholder engagement more fruitfully and productively than a Stewardship Code. It is also the long-term investors who wish to be good stewards over time who will engage in the development of such guidelines.

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **corporate briefings**

CSA believes in the general principle of ensuring that there is no restriction on access to information provided by a company, but does not recommend a role for further regulation in this area.

We note that many companies now provide retail shareholder access to corporate briefings. We do not recommend that the provision of such access be mandated. This is a matter for evolving market practice.

Should legislative or other initiatives (for instance, additional ASX Corporate Governance Council, or other, guidance) be adopted, and if so for what reasons, concerning:

- **the role of proxy advisers, including:**
  - **standards for investors using proxy advisers, including the extent to which these investors should be entitled to rely on the advice of proxy advisers in making voting decisions, or, alternatively, whether those investors should have some obligation to bring an independent mind to bear on these matters.**
  - **standards for proxy advisers**

CSA is strongly of the view that proxy advisory services are an important connection between institutional investors and the entities in which they invest. They provide a commercial, independent research capacity. Proxy advisory services in Australia are not subject to the conflicts of interest that bedevil their counterparts overseas.

CSA does not recommend a regulatory framework be attached to the provision of their services. Institutional investors are free to engage their services or not, and free to heed their voting recommendations or not.

CSA does recommend that proxy advisory services should disclose on their website their own voting and governance guidelines and any changes to those guidelines.

Could greater use be made of technology to promote shareholder engagement outside the AGM and, if so, how?

CSA strongly recommends that the Corporations Act embraces technology, by moving to an opt-in system for receiving hard copy meetings materials. A company would be required to announce to the ASX (and then place on its website in a clearly defined section):

- when the AGM will be held (as is currently the case, prior to the expiration date of an individual's right to nominate an external director)
- when the annual report and meeting materials are available online and how to access them and vote online. Shareholders who have provided their email address to a company and provided consent for electronic communication could be notified of this (as is currently the case).

Should there be an amendment to the right of 100 members to call a general meeting of a company?

CSA recommends the repeal of s 249D allowing 100 members to requisition general meetings of companies (the 100 member rule).

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **do the current reporting requirements produce any unnecessary information ('clutter') in annual reports and, if so, how might this be reduced**

CSA recommends that:

- companies be left to communicate directly with their shareholders as to what form of non-statutory reports shareholders would like to receive
- such short-form reports remain non-statutory.

CSA also recommends a holistic review of the different pieces of legislation and the Accounting Standards aimed at:

- deleting duplication
- reducing reporting requirements to ensure more simple, effective reporting

CSA recommends that any reform consider, review and report on the impact of any planned reform of the existing legislative and regulatory framework. Adding layer upon layer of further legislation or regulations on companies is not streamlining or clarifying reporting and disclosure.

CSA recommends that it is premature to either legislate integrated reporting, mandate a listing rule requirement concerning it or include it as a reporting trigger in the Principles and Recommendations.

CSA recommends the introduction of a broader business judgment rule or a safe harbour in the Corporations Act to ameliorate the concerns held towards integrated reporting, allowing it to flourish.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **should the reporting requirements be redesigned in any respect, including along any of the lines adopted, or under consideration, in overseas jurisdictions, such as having a strategic report and an annual directors' statement**

CSA recommends that appropriate consultation with Australian stakeholders should occur before any reform from another jurisdiction is introduced in Australia.

CSA recommends that any reform consider, review and report on the impact of any planned reform of the existing legislative and regulatory framework. Adding layer upon layer of further legislation or regulations on companies is not streamlining or clarifying reporting and disclosure.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **what, if any, issues of liability might arise in the event of changes to the reporting requirements, particularly in relation to forward-looking statements, and how might this matter be dealt with**

CSA recommends that the introduction of a broader business judgment rule would be useful in relation to developments in integrated reporting and directors making forward-looking statements.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **how might technology best be employed to increase the accessibility of annual reports**

CSA does not recommend any legislative amendment to enable the provision of annual reports to shareholders through the use of technology. CSA would be very concerned that any legislative provisions concerning technology could be out-of-date before enacted, and could hinder evolving technological capacity and innovations in market practice.

Should legislative or other changes be adopted, and if so for what reasons, concerning any aspect of the annual report requirements? In this context:

- **what, if any, initiatives might be introduced to cater for future innovations in reporting (for instance, would it be beneficial to establish the equivalent of a Financial Reporting Laboratory)?**

CSA recommends that the FRC could consider undertaking a project similar to that of the Financial Reporting Laboratory of the FRC (UK) on *A single figure for remuneration*. In the first instance, this body could review existing reporting requirements holistically, with a view to recommending simplification. The work could also extend to exploring, testing and trialling new financial reporting models and concepts (without liability) to enable greater innovation in the market.

Calling the AGM

Should there be any change to the statutory time frame for holding an AGM?

Please refer to the first part of our submission regarding our ideal proposed solution to this issue.

CSA does not recommend any changes to the statutory time frame for holding an AGM within the current context. However, adjustments could be made to the voting entitlement date vis-à-vis the poll deadline (for example, the voting entitlement date could be a business day or two prior to the poll deadline) to ensure that custodians and other nominees have time in which to finalise and verify the voting instructions of the underlying beneficial holders.

In what respects, if any, might the requirements for information to be included in the notice of meeting for an AGM be supplemented or modified?

CSA recommends that no change be made to the requirements for information to be included in the notice of meeting.

How might technology be used to make this notice more useful to shareholders?

CSA recommends that Australia move to an opt-in system for receiving hard copy meetings materials. A company would be required to announce to the ASX (and then place on its website in a clearly defined section):

- when the AGM will be held (as is currently the case, prior to the expiration date of an individual's right to nominate an external director)
- when the annual report and meeting materials are available online and how to access them and vote online. Shareholders who have provided their email address to a company and provided consent for electronic communication could be notified of this (as is currently the case).

Might any other documents usefully be sent with the notice of meeting, and, if so, what?

CSA recommends short-form reports to shareholders, but recommends that:

- companies be left to communicate directly with their shareholders as to what form of non-statutory reports shareholders would like to receive
- such short-form reports remain non-statutory.

Should there be provisions for companies to send information about an AGM directly to the beneficial owners of shares held by nominees and, if so, what type of information?

CSA recommends against extending obligations outside of privity of contract, that is, companies may only have obligations in respect of the registered shareholder, as the constitution acts as a contract between the company and the shareholder (s 140 of the Corporations Act).

CSA recommends that consideration be given to the Canadian model, where issuers, and some other entities, ***may*** make available documents concerning the affairs of the issuer, including annual reports, financial statements and other proxy-related material, directly to beneficial owners of the reporting issuer's securities if the beneficial owner does not object to having beneficial ownership information (including that person's contact information and securities holdings) disclosed to the reporting issuer or other entity. The issuer is to be advised on these matters by the nominee registered shareholder, pursuant to the instructions of the beneficial owner to that shareholder. The securities legislation restricts the use of beneficial ownership information to matters relating to the affairs of the reporting issuer.

Should there be any provision for beneficial owners of shares in a company to participate in the AGM of that company and, if so, how?

CSA does not recommend any legislative provision for beneficial owners to participate in the AGM.

Should there be any change to the threshold tests for shareholders placing matters on the agenda of an AGM?

CSA recommends that there should be no changes to the threshold tests for shareholders placing matters on the agenda of an AGM.

Should there be any change to the timing requirements for the calling of an AGM, including for shareholders to place matters on the agenda of an AGM, to seek the circulation of statements concerning any resolution, or to nominate persons for the position of director?

CSA does not recommend any changes to the timing requirements for the calling of an AGM, including for shareholders to place matters on the agenda of an AGM, seek the circulation of statements concerning any resolution or nominate person for the position of director.

Should companies be required to publish a pre-agenda notice and, if so, what should be the contents and timing of that notice?

CSA does not support any requirement to publish a pre-agenda notice.

Does the current law concerning excluded material either create undue difficulties for shareholders who wish to criticise directors or, conversely, unduly restrict directors in vetting out information to be circulated to shareholders at the company's expense?

CSA does not believe that the current law concerning excluded material creates undue difficulties for shareholders who wish to criticise directors.

Should there be any rule regarding the failure to present a resolution at an AGM?

CSA does not believe that there should be any legislative amendment regarding the failure to present a resolution at an AGM.

Should shareholders have greater scope for passing non-binding resolutions at AGMs?

Given existing shareholder rights, CSA recommends that no further shareholder non-binding resolutions be introduced.

What, if any, additional legislative or best practice procedures should be adopted for companies to seek the views of shareholders on issues they would like discussed at the AGM, or to invite shareholders to submit questions prior to the AGM?

CSA recommends that as guidance on 'best practice procedures' already exists there is no need to recommend that further guidance be developed, and nor is there any need to introduce additional legislative requirements.

Should there be some obligation on the auditor (or the representative of the auditor) to speak at the AGM?

CSA recommends that there be no obligation on the auditor to speak at the AGM, given how infrequently the existing right to submit written questions to the auditor on the content of the auditor's report or the conduct of the audit of the annual financial report is utilised by shareholders.

What, if any, obligations should a company or a company auditor have to answer questions from shareholders?

CSA recommends that no further additional obligations need be introduced for a company auditor to have to answer questions from shareholders.

Business of the AGM

Should any matter be excluded from or, alternatively, added to the business of the AGM?

CSA does not recommend that any matters be either added to or excluded from the business of the AGM.

We refer to our idea set out in Part I of this submission on delinking the meeting from voting, and thereby encouraging the meeting as a lively forum where shareholders can discuss any matter relating to the company.

What, if any, changes are needed to the current position concerning:

- **the general functions and duties of the chair**
- **the chair ensuring attendance of particular persons at the AGM**
- **the chair moving motions**
- **motions of dissent from a chair's rulings?**

CSA recommends that no changes are needed to the current position concerning the general functions and duties of the chair; the chair ensuring attendance of particular persons at the AGM; the chair moving motions; and motions of dissent from a chair's rulings.

We refer back to our 'delinking' idea set out in the first part of this submission. Should that be enacted, the physical meeting aspect of the AGM will be much less formulaic, giving chairs greater flexibility in running the meeting, which should encourage innovation in how the meetings are held, including the increased participation of other directors and senior management, which CSA would support.

Should a chair be obliged to provide shareholders with a reasonable opportunity to discuss a resolution before it is put to the vote?

CSA is of the view that there is insufficient evidence pointing to problems with the current manner of dealing with procedural issues at AGMs and does not recommend change.

Should a chair have the power to impose any time, or other, limits on an individual shareholder speaking at the AGM?

CSA does not recommend any change to the right of the chair to exercise their judgment on the time provided to shareholders to speak at the AGM.

What changes, if any, should be made to the current requirements concerning:

- **informing shareholders of their right to appoint a proxy**
- **the proxy form**
- **any other aspect of proxy voting.**

CSA recommends that no changes are needed to the current requirements concerning the proxy form and the other related issues set out above.

CSA refers to the earlier part of this submission where we recommend that direct voting be mandated. This would replace and abolish the current archaic system of proxy voting (which is a transfer of the rights of shareholders to attend and vote to another person). By replacing the system of proxy voting with direct voting, and mandating direct voting and voting via a poll, the system ensures that the result of all resolutions is the will of the eligible shareholders that voted on them. Voting would be undertaken online as the default with shareholders being given access on request to more traditional means. Shareholders would still retain the right to appoint a representative to attend the meeting and speak on their behalf.

What changes, if any, should be made to the current requirements concerning:

- **pre-completed proxies**

CSA recommends that pre-completed proxy forms be banned.

What changes, if any, should be made to the current requirements concerning:

- **notifying the company of the proxy appointment**

CSA recommends that the legislation should remain as it currently stands, with a third party having the right to solicit proxies and collect them, but obliged to lodge them with the company by the due date.

What changes, if any, should be made to the current requirements concerning:

- **providing an audit trail for lodged proxy votes?**

CSA recommends electronic voting and the mandating of direct voting (see our earlier comments).

What changes, if any, should be made to the current requirements concerning:

- **the record date and the proxy appointment date**

CSA recommends allowing electronic voting to develop further rather than introducing legislative change to extend the record date to five business days before the meeting.

Notwithstanding this, as we note in Part I of this submission, the voting entitlement date could be a business day or two prior to the poll deadline to ensure that custodians have time in which to finalise and verify the voting instructions of their underlying beneficial holders.

CSA also recommends the mandating of direct voting (see our earlier comments).

What changes, if any, should be made to the current requirements concerning:

- **irrevocable proxies**

CSA recommends that this is not a requirement that needs to be retained.

What changes, if any, should be made to the current requirements concerning:

- **directed and undirected proxies**

CSA recommends that direct voting be mandated. By replacing the system of proxy voting with direct voting, and by mandating direct voting and voting via a poll, the system ensures that the result of all resolutions is the will of the eligible shareholders that voted on them. Voting could be undertaken online as well as through more traditional means. Shareholders would still retain the right to appoint a representative to attend the meeting and speak on their behalf.

What changes, if any, should be made to the current requirements concerning:

- **renting shares**

CSA recommends that superannuation funds and managed investment funds should disclose whether or not they permit stock lending by their investment managers/agents in relation to their investments.

What changes, if any, should be made to the current requirements concerning:

- **proxy speaking and voting at the AGM**

CSA recommends that direct voting be mandated. A shareholder would still have the right to appoint a representative to attend a meeting and vote on their behalf.

Direct voting before the meeting

Should direct voting before the meeting be provided for by legislative or other means, and if so what matters should be covered in any regulatory structure?

CSA recommends that any legislative provision simply mandate direct voting. All matters relating to the rules governing the exercise of direct voting should be a matter for the company to decide. CSA refers to the discussion in Part I of this submission for further comment on the value of mandatory direct voting.

Disclosure of pre-meeting voting

In what circumstances, if any, should access to pre-meeting voting information be permitted?

CSA recommends that a shareholder holding more than 20 per cent of available shares could have the right to access the pre-meeting voting information and also access the poll results after the meeting. The shareholder would pay the auditor to check the validity of the process.

Alternatively, 100 shareholders could be given the right to access this information.

CSA does not recommend that an independent scrutineer be mandated. CSA recommends that the legislation could provide that a shareholder could ask for a scrutineer to be appointed and pay for such an appointment.

In what manner if any, should access to pre-meeting voting information be regulated before discussion on a proposed resolution?

CSA recommends against legislation being introduced prescribing whether pre-meeting voting information should be disclosed in advance of a discussion on a particular resolution. CSA recommends that this be left to the discretion of the chair.

In what manner, if any, should the current requirements concerning the disclosure of pre-meeting votes before voting on a resolution be amended?

CSA recommends against legislation being introduced prescribing whether pre-meeting voting information should be disclosed in advance of the vote. CSA recommends that this be left to the discretion of the chair.

Should there be legislative or other recognition of online voting during the course of an AGM and, if so, in what respects should this form of voting be regulated?

CSA recommends market-led practice in this area and that the law remains conducive to and encouraging of best practice rather than mandating one approach. CSA Members note that online voting is legally enabled and are of the view that market practice will evolve to provide for online voting as the norm.

Exclusions from voting

Do any issues arise concerning voting exclusions on resolutions that must, or may, be considered at an AGM and, if so, how might those issues best be resolved?

CSA does not recommend legislative change (see CSA's *Managing voting exclusions on remuneration-related resolutions* for guidance on dealing with the issues that arise).

Should any changes be made to the current provisions regarding voting by show of hands?

CSA recommends against any change is required to the current provision regarding voting by a show of hands. Market practice will shift according to need, as it has with the vote on the remuneration-report resolution. CSA also notes that, if direct voting is mandated (and conducted electronically) voting will automatically take place on a poll.

Independent verification of votes cast on a poll

What legislative, or other, verification initiatives, if any, should be introduced concerning voting by poll at an AGM?

CSA recommends against any legislative or other verification initiatives being introduced concerning voting by a poll.

Should one or more verification requirements apply in all instances or only if, say, a threshold number of shareholders require it?

CSA recommends that a shareholder holding more than 20 per cent of available shares could have the right to access the pre-meeting voting information and also access the poll results after the meeting. The shareholder would pay the auditor to check the validity of the process.

Alternatively, 100 shareholders could be given the right to access this information.

Disclosure of voting after the AGM

Should any steps be taken to promote more consistency in the disclosure to the market of voting results?

CSA strongly recommends greater consistency in the disclosure to the market of voting results.

CSA recommends the ASX Listing Rules could include a form for the announcement of voting results, which would ensure consistency.

Following the AGM, what, if any, rights of access should shareholders generally, or the person proposing a resolution, have to voting documents?

CSA recommends that a shareholder holding more than 20 per cent of available shares could have the right to access the pre-meeting voting information and also access the poll results after the meeting. The shareholder would pay the auditor to check the validity of the process.

Alternatively, 100 shareholders could be given the right to access this information.

What, if any, changes should be made to the requirements concerning the recording of details of voting in the minutes of the AGM?

CSA recommends against any changes being made to the requirements concerning the recording of details of voting in the minutes of the AGM.

Should there be a statutory minimum period for retention of records of voting on resolutions at an AGM and, if so, for what period?

CSA Members recommend that there should be a statutory minimum period of 12 months for retention of records of voting on resolutions at an AGM.

Method of election

Should there be any legislative initiatives in regard to the election of directors, including in relation to:

- **the frequency with which directors should stand for re-election**
- **the right of shareholders to question candidates (and receive answers)**
- **the voting procedure?**

CSA recommends against any legislative requirements being introduced in regard to the election of directors.

If annual elections were introduced in Australia (which CSA believes would only be equitable if the two-strikes rule was abolished — see Part I of our submission in this regard) then we would

recommend that it only apply to the ASX top 300 and be applied on an 'if not, why not' basis under the ASX Corporate Governance Council Principles and Recommendations.

Except as per the first part of this submission, CSA also does not believe that there should be any legislative requirements introduced in regard to

- the right of shareholders to question candidates (and receive answers)
- voting procedures.

Dual-listed companies

Are there any matters concerning dual-listing that should be taken into account in the regulation of AGMs?

CSA recommends that due consideration be given to the regulatory impact on dual-listed companies if they are required to comply with more than one set of regulation, which may or may not be compatible.

Globalisation

Are there any problems in the voting or other aspects of AGMs for overseas holders of shareholding interests in Australian regulated companies?

The main problem is how an overseas holder is noted on the share register. The manner in which the custodian deals with is not in the control of the company and cannot be legislated. The company can only deal with the registered holder. Information flows between the registered holder and the underlying holder are a matter for those parties.

For some or all public companies, should the functions of the AGM be changed in some manner, or the obligation to hold an AGM be abolished?

See our ideas set out in Part I of this submission in relation to changing the functions of an AGM.

As we note in Part I, we strongly support the AGM as a means of shareholder engagement and do not support it being abolished. However, we equally strongly believe that it needs significant reform.

In this context, what technological developments might be taken into account in considering the possible functions of the AGM?

Again, we refer to Part I of this submission, where we set out ideas for the reform of the AGM.

However, even if our ideas for reform of the AGM are not taken up, CSA Members recommend the increased use of technology, including webcasting and online direct voting, and online participation in meetings.

CSA strongly recommends that the legislative framework encourage the use of technology but not prescribe any particular approach, given the likelihood that the technology could be out-of-date once the legislation is enacted. It is vitally important that any legislation provides companies with the flexibility to use technology to enhance shareholder engagement and innovate as to different means of engaging with shareholders.

Future of the AGM

Please refer to Part I of this submission for our ideas on the future of the AGM.