CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

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Australian Shareholders' Association
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Dear Board of the Australian Shareholders' Association

Australian Shareholders' Association Policy Discussion Paper

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management. Our accredited and internationally recognised education and training offerings are focused on giving governance and risk practitioners the skills they need to improve their organisations' performance.

CSA has unrivalled depth and expertise as an independent influencer and commentator on governance and risk management thinking and behaviour in Australia. Our Members are all involved in governance, corporate administration and compliance with the Corporations Act (the Act), with primary responsibility to develop and implement governance frameworks in public listed and public unlisted companies, as well as in private companies.

We welcome the opportunity to comment on the *Australian Shareholders' Association (ASA) Policy Discussion Paper* (the Policy) and appreciate the openness to feedback shown by the ASA in seeking comment on the matters contained in the Policy.

General comments

CSA was of the view that previous ASA policies and guidelines were highly prescriptive in many areas and welcomes the fact that the revised policies consist of high-level principles for the most part and are also shorter in form. A principles-based approach recognises that good corporate governance is not restricted to one approach — the arrangements of many entities differ over time, depending on the life cycle of the organisation, and different approaches can be required at different times and must be relevant to the entity's particular circumstances. What matters is disclosing those arrangements and explaining the governance practices considered appropriate to the entity's circumstances, so that shareholders can pass judgment on them.

As a founding member of the ASX Corporate Governance Council, CSA has been a long-term champion of a flexible, principles-based approach to corporate governance as embodied in the *Corporate Governance Principles and Recommendations* (the Principles). The value of the 'if not, why not' regime is that it eschews a 'one-size-fits-all' approach to corporate governance, instead providing the opportunity for listed entities to put in place governance frameworks that

differ from those set out in the Principles as long as they explain to their shareholders why they have done so. It is for shareholders to test the thinking of directors — the disclosures provide the opportunity for shareholders to enter into dialogue with boards concerning their governance frameworks and practices. The Principles recognise that corporate governance is a dynamic force that keeps evolving, and that governance frameworks need to accommodate the different circumstances of a wide variety of companies.

The ASA is also a long-term member of the ASX Corporate Governance Council and has been very supportive of the Principles. However, despite this and despite the move to a high-level principles approach in its Policies, we note that the ASA Policy still contains instances of a 'one-size-fits-all' approach to corporate governance. In various instances, the ASA states it will oppose the election of directors or vote against the remuneration report unless the prescribed criteria in the ASA's Policy are met, while at other times the ASA states that it will consider voting against (with the implication being that it remains open to engagement on the matter). CSA would encourage the ASA to take the latter view in all instances.

The Policy notes that the ASA has 'divergent views' from the ASX Corporate Governance Council on some issues. Such divergence can be extremely challenging for companies, as there are multiple — and at times conflicting — governance guidelines issued by various investor bodies, each of which can insist that their view should be paramount. Different approaches reflect different shareholder objectives and different approaches to their investment. Yet, clearly, a company cannot meet all of the governance guidelines or shareholder objectives when they conflict. As the AMP Capital *Corporate Governance 2013 Mid-year Report* states:

> The more time we have spent speaking to companies about their priorities, the clearer it has become that companies are under enormous pressure to deliver a complicated, and often mutually exclusive, set of outcomes for their diverse shareholders. Some shareholders see 'shareholder value' as determined by the daily news stream, while for others it is much more about the company's long-term prospects.

We note that directors have a fiduciary duty to act in the best interests of the company. It is important to clarify that the legislation does not state that directors and other officers must exercise their powers and discharge their duties in the best interests of shareholders, but in the best interests of the company. Shareholders do not operate under a fiduciary duty to the company and, given that their interests diverge, directors need to engage with shareholders and consider their views but ultimately make decisions that are in the best interests of the company.

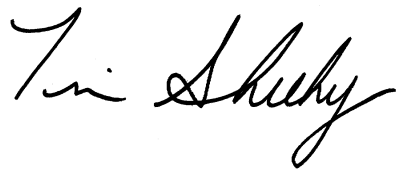
CSA firmly believes that the ASA should seek to apply its Policies flexibly. This would indicate that the ASA and its members understand that, while a particular entity may not comply with the ASA Policy, the particular circumstances of the entity are recognised by the ASA. It would also provide the ASA with the opportunity to engage with the board to assess if board decision-making is in the company's best interests.

We also wish to note that the three-week consultation period is unacceptably short. In the media release accompanying the Policy, the chairman of the ASA, Ian Curry noted that the various matters dealt with in the Policy are intended as 'discussion starters'. Three weeks do not provide sufficient time for stakeholders to meet, discuss the Policy and formulate considered responses. Given that the ASA announced that it would release its Policy for public consultation

at the end of May, which would have provided sufficient time for stakeholders to discuss it and respond, the delay in its issue and the three-week consultation period does not provide a proper opportunity for meaningful engagement on such a wide range of important governance issues. It cannot be considered that a three-week consultation period to be followed by an almost immediate application of the Policy as the annual general meeting (AGM) season gets underway constitutes a start of a discussion.

CSA's comments on specific issues contained in the Policy are set out below.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE

Section 1: Non-executive directors

2 Composition of boards

CSA is of the view that the ASA policy on board composition is the application of a 'box-ticking' model, as it states that the ASA will oppose re-election of directors not classified by it as independent after 'applying strict independence criteria including issues such as tenure and related-party transactions'.

CSA is strongly supportive of board renewal but notes that tenure is not automatically connected to independence. The draft 3rd edition of the Corporate Governance Council's Principles states that:

> To describe a director as 'independent' carries with it a particular connotation. Security holders will interpret that description as meaning that the director is free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, his or her capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the entity and its security holders generally.
>
> … A candidate for election as a director of a listed entity should disclose to the entity all interests, positions, associations and relationships that may bear on his or her independence and those matters in turn should be disclosed to security holders in the materials given to them in support of his or her election.

We note that the draft 3rd edition also proposes that 'Examples of interests, positions, associations and relationships that might cause doubts about the independence of a director include [consideration of whether the director] has been a director of the entity for more than nine years' in Box 2.1. Importantly, Box 2.1 sets out issues that should be considered by a board when determining independence, including tenure — it *does not prescribe* tenure as an indicator of independence.

It is for companies to explain to their shareholders why any director retains independence even if the factors set out in Box 2.1 are in place. The ASA's refusal to countenance engagement on this matter but to apply the tenure criterion prescriptively runs counter to a principles-based approach and shareholder engagement.

3 Chair

The question of a prescriptive approach in relation to the application of a 12-year tenure as a criterion of independence figures again in this part of the Policy.

In addition, tenure limits are not a legal requirement, nor are they commonplace among companies' constitutions. Including tenure limits in a company's constitution would in fact preclude a director from serving on the board past the stated tenure. This would seem unnecessarily onerous and go beyond the intended aim, which concerns the assessment of director independence.

5 CEO voting exemption and transition to non-executive role

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.

Directors act as agents of shareholders. One of the main duties of a board is to appoint and monitor the CEO and, if necessary, replace the CEO. Subjecting a managing director to election every three years undermines this model, as shareholders are setting aside their agents — the board — to make the decision themselves as to the appointment and replacement of the CEO.

CSA cannot support a Policy that undermines the basis of the corporations law.

If CEOs were required to submit for re-election by shareholders, then the company, and shareholders, face increased risks should the CEO not be re-elected. Such a situation could destabilise the company and have other adverse impacts on the company and shareholders' equity. CEO tenure and associated governance practices, such as CEO succession, should remain the responsibility of the board, with the board having regard to matters raised by shareholders through the usual channels.

6 Outside directorships for executives

This Policy takes no account of the value to board renewal of having executives sit on boards, thus ensuring a new generation of board members is 'board ready'. CSA also notes that this Policy seems inconsistent with another section of the Policy calling for at least one woman to be on all ASX200 boards.

Initiatives by companies to improve gender balance at senior executive and board level can also include the appointment of women to subsidiary boards, and encouragement for female senior executives to take on board appointments elsewhere. There is recognition that female executives should be encouraged to take up an 'upskilling' opportunity. The board positions provide women with an opportunity to develop board-level skills, which over time increases the pool of female talent available for board positions generally.

It can also be of benefit to an executive to hold a board position as it enables them to better understand the needs of a non-executive director. This in turn assists them in their day-to-day executive role, when considering matters and information to go to the board for discussion.

Finally, many senior executives wish to make a contribution to society generally, and so choose to sit on not-for-profit boards. This is an under-resourced and largely volunteer-staffed sector that accounts for nearly five per cent of GDP, growing at around eight per cent per year, and is second only to the mining sector in terms of relative growth.[1] It is also a sector that makes a significant contribution to Australia's social capital, through the provision of activities and services including health, social services, education, sport, arts, recreation and religious practices. It is a sector that deserves support and CSA is strongly opposed to a Policy that denies this sector access to the skills and expertise of senior executives. This Policy is counter to the optimal functioning of the not-for-profit sector that makes such an important contribution to the country.

CSA disagrees with the Policy position that states that senior executives serving on outside boards should only occur as executives are coming to the end of their career for all the reasons set out above.

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[1] The Australian Government, the Treasury, *Australian Charities and Not-for-profits Commission Taskforce: Implementation Report*, p2, June 2012

7 Workload of non-executive directors

CSA urges the ASA to recognise that the size and complexity of listed companies varies considerably, and that this will have an impact on the time required of directors. For example, there is a marked variation in what will be required of directors of a company with a market capitalisation of $20 million and one of $100 billion. Not all directorships are equivalent, and this has been recognised in the United Kingdom where a different weighting is allocated to FTSE100 companies than to companies outside that ranking in terms of the demands of a directorship. We note that this Policy does not refer only to the ASX200 but to all companies.

Consideration needs to be given to where the company sits in the life cycle of corporations. If a company is in stress, the time commitment of directors will expand and it is then appropriate to question directors as to their capacity to meet expanded time commitments. Flexibility is required in considering the number of board appointments a director may undertake.

8 Board committees

CSA notes that the boards of many smaller listed entities can consist of only a few directors. The ASX Corporate Governance Council's Principles have long recognised that not all companies are able to establish separate board committees, due to board size, and the draft 3rd edition is now explicit about this. As noted in the consultation paper accompanying the draft 3rd edition:

> The recommendations in the third edition on nomination, audit, risk and remuneration committees (recommendations 2.4, 4.1, 7.1 and 8.1 respectively) all have alternatives that recognise that the boards of smaller listed entities may reasonably decide not to have such committees and instead adopt alternative practices to address the issues that those committees would typically address in larger listed entities.

Moreover, CSA notes that not all companies have employees, and as such will not require a remuneration committee. The ASX Corporate Governance Council's Principles recognise that different circumstances will apply in each entity, and the 'if not, why not' disclosures provide the opportunity for entities to explain to shareholders why their circumstances are such that the Recommendations are not applicable.

CSA urges the ASA to be equally flexible in its approach to board committees.

9 Board duty of care regarding risk management

This Policy needs to be revised to ensure that it fully recognises the role that board committees play. Where an audit committee (with oversight of risk management) or risk committee is in place, it will be these committees that monitor the risk register, not the board. The second sentence needs to read as follows:

The board or its delegated committee should carefully monitor the risk register and the board should require management to design and implement the risk management and internal control system to manage the company's material business risks.

10 Director credentials

CSA notes that board diversity has been a topic of discussion for some years. CSA is a strong supporter of board diversity and is of the view that the ASA is also supportive. Geographic diversity is one element of diversity — at a time when technology advances have made meetings of people in different geographic locations possible (this is now recognised in the Corporations Act), the city of residence of a director is irrelevant to their credentials as a director.

CSA also notes that a director's size of shareholding must be announced to the market under the Corporations Act (see s 205G) and the Listing Rules (see Listing Rule 3.19A). As this disclosure already occurs, CSA is of the view that a second disclosure is not required. Shareholders should look to the ASX markets announcement platform for this disclosure.

11 Character test of directors

CSA does not support a disclosure of any adverse regulatory judgment that a director may be facing. Once a regulatory judgment has been received it may need to be disclosed, depending on the nature of the matter, but until such time as a judgment is received the matter is an allegation. This should be amended to read as follows:

> If an incumbent director has received an adverse regulatory judgment, this should be disclosed to shareholders and the proposed course of action explained, subject to the fact that in some instances information may be confidential to the regulators or the courts or subject to some other reasonable confidentiality restriction and the director or proposed director will not be able to provide a detailed explanation of the circumstances involved.

CSA notes that the ASA Policy cannot ask directors to breach court or regulatory orders or other confidentiality restrictions.

12 Tenure limits and board size

CSA notes again our concerns with tenure being used as a criterion for independence.

On the matter of board size, CSA notes again that boards are the agents of shareholders, and that the corporations legislation, in Australia and other common law countries, is very clear as to the division of responsibilities in companies.

It is not for shareholders to decide the size of the board (subject to limits set out in the constitution of the company), but for the board to determine the appropriate size, taking into account a range of factors, including life cycle and market factors. For example, we note that mining exploration companies can experience markedly different market conditions that will affect board decision-making in many ways. Depending on the price of commodities and market sentiment (including the fact that there can be investment mandates that require the selling of such companies as share prices go down and retail investors tend to exit such sectors when commodity prices go down), such companies will either be expanding or contracting to survival mode. Cash is essential to such companies prior to going into production, and they must reserve cash if they are to survive changes in market conditions. At such times, these companies will reduce the executive team, reduce board numbers, reduce directors' fees and lower wages. The board makes the decision to reduce board size as part of its overall determination of what is in the best interests of the company.

While the Policy refers to the ASX300, we note that mining exploration companies can move in and out of the ASX300, depending on market conditions, so this example applies.

As noted earlier, CSA is of the view that it is for the board to determine board size, subject to the minimum and maximum limits on board size in the company's constitution, which is decided by shareholders.

15 Other types of diversity

We refer to our earlier comments about geographic diversity. By stating that, ideally, a chair should live in the same city where the CEO resides and the company is based, this Policy conflicts with its own stated position that geographic diversity is important.

Technological advances have made it possible for a great many people, directors included, to live and work anywhere. We also point to the fact that the Policy would be greatly limiting on board renewal, given that many directors currently fly back and forth between Sydney, Melbourne, Brisbane and other cities on a regular basis.

16 Voting against non-executive directors on performance and ethical issues

This Policy does not recognise that boards may need to take decisions concerning the long-term economic sustainability of the company, wherein they recognise that short-term performance may be affected in order to ensure longer-term survival. We return to our example of the mining exploration company. Such companies have directors familiar with this sector, and so they are likely to be on more than one board that will suffer from the same market conditions simultaneously. Under the ASA Policy, the directors of such companies would not be supported for re-election on their various boards by the ASA, regardless of the fact that each board recognises that the asset is good (and other non-retail investors also recognise this) but market conditions are producing poor performance.

We refer again to the AMP Capital *Corporate Governance 2013 Mid-year Report*:

> Companies almost always have to consider how they balance the conflicting demands of traders focused on this week's share price, against the demands of strategic owners who take a longer-term view. This phenomenon is no surprise but given that 'the squeaky wheel gets the grease', it appears companies have paid greater heed to their vocal 'short-term' shareholders and become more keen on the next results announcements than on investing for the long term.

17 Chair and CEO performance

CSA is of the view that opposing the re-election of a director at an unrelated company could destabilise the board of the unrelated company and put at risk other shareholders' investment. CSA does not believe that the shareholders of unrelated companies should suffer destabilisation of their boards where performance is good, simply to allow the ASA to 'make a point'.

18 Related party transactions

We note that the ASA has stated that, 'ASA also believes that there needs to be legislative reform to improve disclosure of related party transactions and ensure shareholder approval is sought on material related party transactions'.

While we support ASA undertaking advocacy for legislative reform on issues of concern to it, as we undertake advocacy for legislative reform on issues of concern to us, we note that such a statement of advocacy intent has no place in a Policy on governance.

19 Board audit committees

CSA notes that it is a Listing Rule requirement that ASX300 companies have an audit committee.

We also refer to our earlier comments about the recognition granted by the ASX Corporate Governance Council that smaller companies may not be able to establish separate board committees, due to board size, and the explicit reference in the draft 3rd edition to how this can be dealt with.

On the matter of financial qualifications, we refer the ASA to the ASX Corporate Governance Council's Principles:

> The audit committee should include members who are all financially literate (that is, be able to read and understand financial statements) and at least one member should have relevant qualifications and experience (that is, should be a qualified accountant or other finance professional with experience of financial and accounting matters); and some members should have an understanding of the industry in which it operates.

This commentary was explicitly worded to accommodate the fact that it may not be in the best interests of a company to have only accountants on an audit committee. CSA strongly urges the ASA to replace the word 'qualified' with 'literate' or to revise this Policy to align with the Council's Principles.

CSA is also concerned with the Policy's statement that the audit committee should 'help facilitate any engagement between the external auditor and shareholders'. Currently, under provisions in the Corporations Act, shareholders have the right to ask questions of the external auditor at the annual general meeting. However, corporations legislation does not provide for nor contemplate shareholder access to the external auditor on an ongoing basis. CSA is of the view that this aspect of the Policy needs revision.

CSA is of the view that the ASA Policy's stated belief that audit firms should be rotated after no more than 12 years is neither practical nor consistent with the intent of the Corporations Act. While the Policy recognises that the Corporations Act requires audit partners to rotate every five years, to ensure that they remain independent, the Policy does not recognise that rotating the firm is a massive change that would come at substantial cost to shareholders, and one that would see all corporate memory drain from the audit firm. We also note that if ASA were to adopt an audit firm tenure limit in its Policy, then it should be a multiple of five, say 15 years, to align with the audit partner rotation schedule.

20 Continuous disclosure

CSA notes that the ASX announcement platform cannot be a 'priority vehicle', as stated by this Policy. Continuous disclosure via the ASX announcements platform is *mandated* by law and the Listing Rules. That is, a company *must* disclose via the ASX announcements platform and then may choose to also disclose the information elsewhere (for example, its website).

Companies must form a view on whether a matter is material and this judgment will dictate whether the information is lodged with the ASX (the issue of materiality is central to Guidance Note 8 on continuous disclosure issued by ASX). A matter may be of interest to shareholders but if it is not material it will not be lodged on the ASX announcements platform, as the announcements platform is not a public relations device, but serves a specific legal purpose for the dissemination of information by companies regarding matters that are considered material to their share price. Retail shareholders are well advised to keep their eye on the websites of the companies in which they are invested, or interested, as they will generally also post the media release as well as the ASX announcement.

21 NED remuneration

CSA notes that this Policy calls for shareholder approval of the maximum fee cap for non-executive directors when directors decide to pay themselves less than the fee cap. CSA supports shareholders approving a maximum fee cap, but CSA does not agree that lowering the maximum fee cap requires shareholder approval. It defeats the purpose of having a maximum fee cap in the first place — while shareholders should approve any increase in the cap, it is for the board to decide if they pay fees less than the maximum.

Non-executive directors are paid a fixed fee. They do not receive bonuses, or other forms of performance-based pay, such as are put in place for executives, which is a key pillar in maintaining their independence. Requiring shareholder approval of fixed fees lower than the

maximum fee cap approved by shareholders strays into the territory of paying directors on a performance-based model.

It is also another example of shareholders seeking to be involved in the management of the company, which is the board's responsibility as agents of shareholders.

22 Board responsibility for capital raisings

CSA notes that the first sentence in this Policy does not take account of the reality that, during the onset of the global financial crisis, if the companies had not raised funds as quickly as they did, many of them would not have survived and shareholders' investments would have been lost completely. Any board faced with the certainty of institutional placements at a time when capital needed to be raised very quickly versus the uncertainty of whether sufficient interest would be generated from equity holders when the market was plummeting had to act in the best interests of the company. Retail shareholders were leaving the market in significant numbers, which added to the uncertainty as to whether sufficient interest would be generated from equity holders in a capital raising. Boards should retain the flexibility to raise capital in the manner that is most appropriate to the circumstances of the company and which are in the best interests of the company as a whole in the long-term.

24 Role of remuneration advisers and proposed pay changes

CSA notes that the disclosure of the details of remuneration advisers is required under the Corporations Act. These disclosures must be made in the remuneration report.

25 Director equity holdings

CSA is of the view that requiring a percentage of a director's fee to be paid as shares by non-executive directors goes against the principle of independence. A large part of the governance discussion over the past decade has been concerned with the independence of non-executive directors, and the consensus on ensuring that non-executive directors' remuneration should not be performance-based but fixed is central to ensuring independence is maintained.

Other considerations have not been taken into account by this Policy. Some directors may join a board and already own shares in the company while others may not own shares in that particular entity. It is also increasingly difficult for directors to trade in shares in the companies they govern at any time, as corporate actions may be underway at most times. The prohibition on insider trading means that it may not be feasible for companies to purchase shares on-market at particular times.

CSA is firmly of the view that it is for each board to determine its policy on share ownership by non-executive directors and to explain that policy to shareholders.

Section 2: Communicating and engaging with retail shareholders

26 History of financial performance

CSA notes that companies are bound by the Accounting Standards, which have the force of law under the Corporations Act, in relation to financial reporting. They must therefore report according to the Accounting Standards and not the ASA's Policy.

27 Communication policy and avenues

CSA notes that it is a Corporations Act requirement that any shareholder has the right to request a hard copy of the annual report. The amendments to the Act that were brought in to provide for the annual report to be issued electronically were subject to shareholders still being able to request a hard copy.

CSA also notes that AGM details are already provided in advance of the 28 days' notice period required under the Corporations Act, as the Listing Rule requirements are that this must be announced five business days prior to the cut-off date for director nominations.

While CSA understands that some shareholders may wish to have access to the full audio record of the AGM on the ASX100 companies' websites, CSA notes that resources vary from company to company in terms of maintaining websites, archives and a social media presence. CSA suggests that this Policy should use words such as 'the ASA encourages' to reflect the reality of costs and resources, rather than prescribing such matters.

CSA also notes that the 2010 amendments to the ASX Corporate Governance Council's Principles introduced the following:

> **Briefings**
> Where possible, companies should arrange for advance notification of significant group briefings (including, but not limited to, results announcements) and make them widely accessible, including through the use of webcasting or any other mass communication mechanisms as may be practical.
>
> Companies should also keep a summary record for internal use of the issues discussed at group or one-on-one briefings with investors and analysts, including a record of those present (names or numbers where appropriate), and the time and place of the meeting.

28 Conduct of meetings

CSA notes that it is a Listing Rule requirement that the presentations from the chair and the CEO be released on the ASX announcements platform prior to the commencement of the AGM, even if no material information is contained therein. That is, this is mandatory and not a matter of choice.

Where there are references to shareholders in this Policy, the ASA may wish to consider also referring to proxyholders, to take account of the fact that ASA representatives attend and are entitled to speak at AGMs as proxyholders.

29 Polls

CSA is pleased to see that the ASA has shifted its position on voting by a show of hands and supports voting by a poll. Until now, the ASA has consistently supported voting on a show of hands so that directors can 'take the temperature of the room' and enable retail shareholders present to express a position to directors.

CSA supports voting by poll on all resolutions as the shareholders present at the AGM may represent a tiny portion of total shareholders. Deciding the vote on resolutions by poll is advisable in the interests of transparency and to take account of the proxy votes that have been lodged. Otherwise the vote is potentially misleading.

30 The proxy voting system

CSA notes that the majority of votes are lodged in the final 48 hours prior to the voting cut off time (48 hours before the commencement of the AGM) and that it is not practical to notify any proxy holder of their proxy position 'early'. Nor is it feasible to inform the ASA of its proxy position the day before the AGM, as votes are still being counted and verified during this time. CSA strongly suggests that ASA representatives visit one of the share registrars during the AGM season to assess how the proxy voting system works and how it is not possible to confirm voting according to the schedule set out in this Policy.

CSA also notes that the ASA's request to 'report back' to proxy providers after an AGM would require the company to provide the ASA with information about shareholders, such as name and address. This would be a breach of privacy laws.

CSA also notes that each notice of meeting contains explanations of how the voting on the remuneration report operates. Given that this has already been explained to shareholders in the documents accompanying the voting form, CSA is of the view that the explanation does not need to be provided again at the AGM. Moreover, shareholders already complain of how much of the meeting is occupied with formalities and providing an explanation of something already set out in the notice of meeting will exacerbate this situation.

Section 3: Executive remuneration

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. Remuneration is only one element in that range of decision making. Prescribing the remuneration frameworks that companies should implement isolates one element of director decision-making from its broader context.

CSA also notes that there are multiple governance guidelines issued by a range of shareholder bodies, and all of them cover remuneration and many of them conflict. It is impossible for any company to meet the expectations of all shareholders on remuneration when shareholder views on this topic are mutually exclusive.

CSA is of the view that the ASA and its members seek to understand what the company is trying to achieve in the setting of its remuneration framework, and how it will benefit shareholders. A prescriptive approach to remuneration does not accommodate differing approaches to remuneration based on different circumstances, nor does it provide for opportunities for shareholder engagement. For example, it is inappropriate to simply call for a CEO's fixed salary to be not more than double the next highest paid company executive, and for a CEO's maximum annual total pay to be linked to a company's market capitalisation.

CSA is equally of the view that boards must make every effort to explain their remuneration frameworks and why they are in the best interests of the company. Remuneration must be linked to strategy and remuneration structures cannot sit separately from what the company is seeking to achieve. It is for boards to 'tell the story' of the company and how the remuneration framework will help it achieve its objectives.

It is commendable that the ASA has chosen to amend its Policy on LTI vesting quantums and schedules. However, as stated previously, it would be inappropriate for ASA to vote against company LTI schemes which do not meet the ASA's new criteria without providing companies with sufficient time to consider and respond accordingly. Indeed, there is no time for companies to review and amend their LTI schemes ahead of this year's upcoming AGM season. CSA urges ASA not to vote against LTI schemes which do not strictly meet the new criteria proffered by the ASA.

Moreover, the ASA's current practice accords with that of other proxy advisers, who will consider a remuneration report as a whole, with their reports noting and commentating on the sections of the report which do not align with their guidelines. As a result these issues are reported and

discussed. However, the proxy advisers will then form a view as to whether to recommend a vote for or against a remuneration report based on an assessment of all relevant factors. As a result, there may be a vote in favour of a remuneration report even where one aspect of a company's remuneration structures does not accord with the proxy adviser's current guidelines. CSA encourages the ASA to continue with this current practice, which is currently undertaken by ASA monitors, rather than moving to the approach set out in the draft Policy.