



Australian
Shareholders'
Association

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Senate Economics Legislation Committee
c/- Mr Mark Fitt
Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600

**ASA SUPPLEMENTARY SUBMISSION – INQUIRY INTO CORPORATIONS AMENDMENT
(MODERNISATION OF MEMBERS REGISTRATION) BILL 2017**

Dear Senators

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to our submission dated 18 July 2017 in relation to the Corporations Amendment (Modernisation of Members Registration) Bill 2017 (**Bill**). We also refer to the public hearing in relation to the Bill held on 2 August 2017 in Sydney (**Hearing**), which we attended.

At the Hearing, we were asked to provide further details on how to facilitate the intent of the Bill, that is, to allow reasonable, if not robust communication between members without matters of privacy being breached and without it being done for an improper purpose.

We understand the Committee is interested to hear if a new provision should be inserted to the Corporations Act 2001 (Cwlth) (**Corporations Act**), which would allow a member to request that the company distribute a statement to all members, provided that the member has the support of 100 members, the distribution is for a proper purpose and is done through a third party such as a share registry such that concerns of cybersecurity and privacy are allayed.

Currently, Part 2G.2 of the Corporations Act provides for a number of rights for shareholders to:

- call an extraordinary general meeting (section 249F);
- propose a resolution to move at a general meeting (section 249N); and
- distribute a statement provided by the members about a resolution that is proposed to be moved at a general meeting or any other matter that may be properly considered at a general meeting (section 249P). The company need not send out the statement if it is longer than 1,000 words or defamatory.

The provisions protect the rights of members to use a 100-member test to have their concerns, including governance concerns, addressed. Even if such resolutions are not carried, the debate they generate has been central to shareholder engagement with corporations. We support this. We acknowledge that circumstances will arise outside of this timing, but the provision of the kind envisaged by the Committee would mean, unless the provision took a different form from sections 249N and 249P, that the company was put to the expense at any time of distributing statements from members to other members, no matter whether the issue was serious or trivial. Some of these concerns will be legitimate, such as in CPA's case. Indeed, there are times when the ASA would probably like to be in a position to distribute information about a company to all shareholders of the company to raise issues which are of concern to us. However, other issues raised by members may not necessarily be of interest or relevance to members, who will nonetheless be subject to receiving missives from unknown other members on matters that may only be of concern to a few, at the expense of the body of members. Such communications could be numerous.

It is important to remember that the sections set out above and any proposed new section apply to all companies incorporated under the Corporations Act, not just member associations. Member associations such as CPA will generally be companies limited by guarantee (a form commonly used by not-for-profit organisations). But the provisions that currently exist apply also to listed companies with thousands of shareholders (for example, Commonwealth Bank has 800,000 shareholders) or even millions of shareholders (for example, Telstra Corporation has 2.4 million shareholders). Furthermore, as we noted at the Hearing, member preference as to the form of communication must be respected, and so any such communications would be by both email (where the member had provided an email address and opted in to receive communications by email) and by hard copy (where the member had indicated they only wish to receive communication by hard copy). Should a new provision as envisaged by the Committee be introduced in the same form as sections 249N and 249P, it would include distribution at the expense of the company, which we do not support. The costs of distributing statements at any time throughout the year would have a significant cost impact — it is shareholders' monies or members' fees that would be expended on each distribution, irrespective of relevance to the main body of members.

While there are benefits of an additional provision, as illustrated by the CPA scenario, there are also therefore significant risks involved in introducing a new provisions of this kind. Given that the majority of resolutions proposed under section 249N are not carried, it is reasonable to infer that many statements that a member may wish to distribute to other members may not be of relevance

to the other members. Members could therefore be subject to a range of communications that they consider irrelevant — in effect, they could be of the view that they are being ‘spammed’.

We are therefore of the view that such communications, if the Committee recommends an additional provision of this kind, should be at the member’s expense and not the company’s expense. If it is at the member’s expense, we are of the view that members would only seek to distribute statements of serious concern rather than more trivial matters that are considered irrelevant by the majority of members. The cost becomes a safeguard to ensure that the provision is not abused.

If any new right was to be introduced to allow members to communicate with other members at any time of the year, we are of the view that it would need to be subject not only to a 100-member test but also a proper purpose test.

Under the current law, a company must allow anyone to inspect the register (section 173(1)), but the Corporations Act 2001 restricts the right to obtain a copy of a register (s 173(3) and (3A)) and the use of information obtained from a register (s 177). Under section 173(3), the company must provide a copy of the register or a part of the register to either a member or another person provided that the person makes an application in a prescribed manner and pays the prescribed fee. An application for a copy of a register must:

- state each purpose for which the person is accessing a copy (none of which must be an ‘improper purpose’); and
- include the name and address of the applicant.

The company can refuse to provide a copy where the stated purpose is an improper purpose as provided in the Corporations Regulations 2001. The Corporations Regulations sets out the list of improper purposes, which are:

- making an unsolicited offer to purchase financial products off market (such as those made by David Tweed);
- the solicitation of a donation from a member of a company;
- the solicitation of a member of a company by a broker; and
- gathering information about personal wealth of a member of a company.

We recognise that, in practice, determining whether a communication is for a proper or legitimate purpose is not an easy task.

In our view, an additional provision of the kind envisaged by the Committee would open the floodgates to facilitate a large range of communications between members of listed companies. As an example, we often receive correspondence from members of listed companies in relation to

supposed governance and other issues in their investee companies but we question whether any or all of these communications would meet a 'proper purpose' test.

For such a provision to operate, there would need to be sufficient safeguards in place to ensure that only communications which are legitimate and supported by well-documented evidence could be distributed to members. The member should also be required to disclose any prior relationships or dealings with the company. The decision about whether a communication satisfies the test would need to be determined by the company and not a third party distributing the communication. We can imagine that a great deal of time would be spent on disputes as to whether such communications did indeed meet the 'proper purpose' test.

We wish to stress again that any provision of the kind envisaged by the Committee would have significant implications for listed and unlisted companies in Australia, as noted out above. We stress that consideration must be given to the implications for all companies and not just member associations, should the Committee recommend any amendments to the Corporations Act.

If you have any questions about this submission, please do not hesitate to contact me on (02) 9252 4244.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Fox', with a stylized flourish above the 'x'.

Judith Fox
Chief Executive Officer
Australian Shareholders' Association