



# **Chartered Institute of Company Secretaries in Australia Ltd Comment**

## **Corporate Law Economic Review Program – Paper No 7**

### **Simplified lodgements and compliance: streamlining paperwork under the Corporations Law**

#### **Introduction**

The Chartered Institute of Company Secretaries in Australia Ltd (CICSA) supports any attempt to reduce unnecessary paperwork and to measures that permit its members to take advantage of the electronic environment. The Institute has already demonstrated its willingness to assist ASIC in its educational attempts in such matters.

Comments – reference to section headings in Paper

#### **Part 3: Company Annual Returns**

##### *3.2 Annual Returns not required*

We welcome the proposed abolition, although we believe that for many small companies the completion of the Annual Return is often the only time the directors and management turn their minds to the compliance obligations and acts as a prompt to review and update ASIC's details. Whilst the proposed Extract of Particulars has the same intent, the fact that it does not require a positive response may detract from the degree of review. We note from reading the Financial Services Reform Bill Exposure Draft that the Annual Statements required of holders of Dealers, Futures and Advisers Licences, which contain much of what appeared in the Annual Return, will be abolished.

##### *3.3 Notifying changes to members' particulars*

The Annual Return is currently the only source of information about the membership of a company. Companies are not required to provide details in the financial statements, other than disclosing the ultimate ownership. The paper identifies other sources of information of changes of membership which are advised to ASIC, such as issues of shares. However actual transfers of ownership are not currently required to be disclosed. By its nature the information in the annual return can be anything up to 12 months out of date by the time it is revised. Whilst we recognise that there may be benefit in requiring companies to advise changes as they occur, the proposal as drafted places the obligation to advise such changes on only one group of companies, those that do not produce financial statements. This would be an unnecessary burden for such a large group of companies – the statistics in Schedule D, Table 4 suggest that 285,000 proprietary companies notified changes of membership in the Annual Return.



We recommend that parties wishing to enquire into the current membership of a company which is not required to produce financial statements make the same enquiries of the company as those that they would make of a large listed company i.e. examine the register. We suggest that this would relieve companies from having to advise ASIC of changes and transfer the cost of providing the information on membership to the person seeking it.

### *3.4 Annual fee*

We recognise the value to ASIC of spreading the distribution and collection of the Extracts of Particulars across the calendar rather than confining them to a period related to a specific return date eg 31 January. We are however somewhat doubtful of the value to companies of sending the Extracts just before the anniversary date of registration. Whilst important in the registration, this is not a date that has any other meaning or significance to a company. Indeed we note that it is shown in neither the current Annual Return nor the basic search details shown on the ASIC records of a company.

We appreciate the option to be provided to companies to select another date which better suits their business needs. We believe that this option would be readily taken up by companies in large groups and by companies administered by agents to assist in confining the activities to a set time or times in each year. There may be a move back to re-aligning the relationship between the annual financial statements and the annual return to ASIC to satisfy the solvency declaration obligation, although some may choose to move the obligation to a quieter period in the year.

We note that the proposal indicates that the Extract of Particulars will be sent out at least one month prior to the payment due date. We would recommend that this be the minimum period and would express a preference for a longer period, particularly for those companies administered by agents who will still be obliged to obtain confirmation of the details and Annual Fees from the companies. As in all other proposals the Institute supports any steps that ASIC proposes to educate company management of their compliance obligations.

### *3.5 Extract of Particulars*

We welcome the confirmation of changes to the Extract of Particulars with the production of an updated Extract. This ensures that changes have been correctly recorded and provides the company with a de facto copy of register entries.

### *3.6 Return of Particulars*

We recognise the intention and content of the Return of Particulars.

### *3.7 Solvency Declaration*

As noted above in 3.3, the approval and lodgement of the current Annual Return is often the only time that the directors and management of many small companies turn their minds to the question of solvency. We suggest therefore that the Extract of



Particulars include a reference to Solvency Declarations, identifying those that have been made as part of the Financial Statements or requiring companies that are not required to lodge financial statements to specifically confirm that the section 346 requirement for an annual solvency resolution by directors has been continuously met. This could be part of the new Multi-purpose Form.

#### **Part 4: Streamlining document lodgement requirements**

The Institute supports any measure for streamlining document lodgement requirements. We do however suggest that the requirements for proper authentication be fully researched and established. To this end the Institute has made a detailed submission to the University of Melbourne / ASIC project on the Electronic Corporation which addresses in part this issue of authentication. We support any activities that may be undertaken by ASIC to educate companies in their compliance obligations.

##### *4.2 Promoting timely compliance – supported*

*4.3 Forms rationalisation* – We support any measure to reduce the number of forms required to advise changes. We are willing to assist ASIC in the development of the proposed Multi Purpose Form. We suggest that changes to the business and principal activities of the company and to the principal place of business are issues that may be of more immediate importance to investors, creditors, suppliers and customers than changes of directors and that these should be the subject of advices within a set time and thus part of the Multi Purpose Form. We note that in rationalising the forms required under the Corporations Law that there are similar forms required under other provisions of the Law eg Form 704 notification of changes of directors of corporate licence holders which effectively duplicate much of the information already provided in the old Form 304. We request that these be abolished in the same way that the Annual Statements of Licence Holders are to be abolished.

##### *4.4 Making corrections to errors and changes to particulars electronically*

We support measures to assist in the lodgement and correction of documents in whatever format is best suited to the company. The issue of authentication should always be of prime importance to ensure that ASIC's records are correct.

##### *4.5 Electronic transactions*

We support any measures to promote the electronic lodgement of documents and fees. We note however that at present the linkage between the electronic receipt of documents and the electronic receipt of related fees does not always coincide, despite their having been lodged together. This suggests that some work may need to be done to ensure that companies will be comfortable transmitting both documents and fees electronically to ASIC.



## **Part 5: Business Advisory Board**

The Institute fully supports the establishment of the Business Advisory Board to assist ASIC in its operations and strategies. We have long had an effective working relationship with both the senior and operational levels of ASIC and would hope to be invited to join the Board, in the light of the company secretary's unique and constant involvement in the logistics of such matters.

## **Part 6: ABN and ABR**

We have noted the introduction of the Australian Business Number as an element of the New Tax Regime and have noted the references to the eventual replacement of the Australian Company Number by the ABN as a step in simplifying communications between business and government departments. We do however request that the transitional arrangements to allow for the changes to be taken on by companies be sufficiently long to allow for full utilisation of existing supplies. The reprinting of letterheads, notices at registered offices and new seals may take some time. We note that the replacement of the ACN by the ABN will require substantial legislative changes. We support the rationalisation of the periods for notification of changes and note the legislative changes required. We look forward to considering such changes.

## **Part 7: Corporations Law fees**

We welcome the proposed rationalisation of the fee structure and support the bases for the calculations. We have a number of minor comments:

- The differentiation of annual fee between public and proprietary companies appears to make no distinction between large and small proprietary companies or indeed between public and large proprietary companies, which may often be substantially larger than many public companies. We recognise however that attempting to set fees levels according to company size will detract from the desire to achieve simplicity of compliance.
- We cannot see that a sliding-scale fee structure for fundraising would be administratively difficult, since the amount being sought would be clearly set out in the supporting documentation.

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**Chairman**  
**Legislation Review Committee**