



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

31 August 2011

The Right Hon. Wayne Swan MP
Deputy Prime Minister & Treasurer
PO Box 6022
Parliament House
Canberra ACT 2600

By Email: ministerial@treasury.gov.au

Dear Treasurer

Time frames for reviews, inquiries and consultations

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. As governance professionals, CSA Members are directly affected by amendments to legislation, and/or policy in a diverse range of industries and sectors through Treasury's reviews, inquiries and consultations. They are responsible for implementing the changes to processes and frameworks to ensure compliance with legislative amendment as well as advising their boards to ensure their oversight responsibilities are fulfilled.

CSA has noted that the time frames for consultation on legislative reform provided by Treasury have become, in many instances, unacceptably short. In January 2011, CSA noted in its submission on the Exposure Draft — Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011: 'CSA Members are also concerned about the period of consultation, being only one month and over the Christmas holiday period.'

CSA notes that the recent consultation on the Exposure Draft – Legislative Framework for Public Ancillary Funds was issued on 14 July and due for comment on 1 August — this provided a total consultation time of 19 days (13 business days). Similarly, the recent consultation on the Exposure Draft – Corporations Amendment Regulations 2011 – Funded Class Actions was issued on 27 July and was due for comment on 12 August — a total consultation time of 17 days (11 business days). The Exposure Draft — National Consumer Credit Protection

Amendment (Enhancements) Bill 2011 was released on 5 August and was due for comment on 17 August — a total consultation period of 13 days (a mere eight business days).

These time frames do not accord with the recommendations of the Banks Report¹ and, in particular, the principle which requires effective consultations with stakeholders. Furthermore, they do not accord with the government's own guidelines on consultation as found in Appendix C of the Department of Finance and Deregulation's *Best Practice Regulation Handbook (June 2010)*. This recommends a consultation period of between six and 12 weeks, depending on the significance of the proposal, citing the United Kingdom Government's Code of Practice on Consultation which stipulates a minimum of 12 weeks for written consultation at least once during the policy development process.

The *Business Checklist for Commonwealth Regulatory Proposals*, which has endorsement from a number of leading professional associations, representing diverse stakeholder interests, furthers the principle of effective consultation and recommends that consultation periods be at least 30 days and longer for more complex consultations.

It is evident that the recent consultation agenda has not met these benchmarks. CSA's concerns with short time-frame consultations reside with the problems which arise from insufficient or inappropriate consultation. In the first instance, CSA notes that a short time frame provides insufficient time to canvass views and generate discussion among stakeholders and potential respondents. When stakeholders do not have sufficient time to review the proposed reforms and consider their impact, it cannot be said that effective consultation is taking place.

The second concern is that short time frames may also lead to drafting errors in the proposed legislation or legislative amendment. This was recently exemplified by the consultation on the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011. CSA notes that the 30 days provided for consultation during the Christmas holiday period for a major piece of legislation resulted in very few business days being available for review of the detail of the proposed reform. A number of drafting errors were discovered, that would have resulted in grave embarrassment to the government should they have proceeded to the final version of the legislation.

Consultation on the final Bill was also undertaken within a short time frame, leading to a drafting error that would have seen many shareholders disenfranchised of their voting rights, were it not for the Australian Securities and Investments Commission issuing an Information Sheet noting that it was acceptable for companies to modify proxy forms to change an undirected proxy to a directed proxy. Regardless of the fact that the government has now announced that it will amend the Corporations Act to overcome this drafting error, it is not acceptable that so much time and effort, on the part of our Members, legal advisers, the regulator, and other stakeholders, should be applied to seeking to address the negative consequences of the original drafting error, particularly when it would probably have been avoided with sufficient consultation time. Time is required to fully assess the implications of proposed legislative reform and provide informed comment on the proposed changes.

¹ Treasurer of Australia, *Report of the Taskforce on Reducing Regulatory Burdens on Business – Final Government Response*, Media Release, 15 August 2006.

CSA believes that consultation time frames need to be appropriately structured to allow ample time for stakeholders to respond and provide the necessary insight into the direct and indirect consequences of proposed legislation or legislative amendment. CSA requests that Treasury reaffirm the importance of appropriate and timely consultation periods with relevant stakeholders.

CSA would be more than happy to discuss its concerns further with your office.

Yours sincerely

A handwritten signature in black ink, reading "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
CHIEF EXECUTIVE

cc The Hon Bill Shorten MP, Assistant Treasurer, Minister for Financial Services and Superannuation
 The Hon David Bradbury, Parliamentary Secretary to the Treasurer
 Geoff Miller, General Manager, Corporations and Financial Services Division, The Treasury