



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

10 June 2010

Manager
Governance and Insolvency Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: acesstoregisters@treasury.gov.au

Dear Minister Bowen

Corporations Amendment (No 1) Bill 2010

Chartered Secretaries Australia (CSA) is the independent leader in governance, risk and compliance. 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. CSA represents the company secretaries of most of Australia's largest public and private companies, all of whom are involved in maintaining registers of members and considering requests to access and use those registers.

Support for the Bill and the introduction of a proper purpose test

CSA welcomes the opportunity to comment on the Corporations Amendment (No 1) Bill 2010 (the Bill).

We commend the government for introducing legislation requiring persons seeking a copy of the register of members to apply to a company, stating their name, address, corporation, the purpose for which they will use the information contained in the register and whether the information will be disclosed to a third party. Excluding undesirable uses of the register remedies the shortcomings in the current law that allow shareholder details to be made available to anyone who requests a copy of the register regardless of the intended use of the information.

We congratulate the government for limiting access to the register to appropriate purposes through legislative reform, thereby ensuring that shareholders' personal contact details will not be able to be accessed by all and sundry for commercial gain. CSA supports the government's move to specify a non-exhaustive list of improper purposes in the Corporations Regulations, and agrees that, should other improper purposes become evident in the future, the Regulations will be able to be amended more swiftly than if the improper purposes were specified in the Corporations Act.

In particular, given our members' knowledge over the past decade of sources of requests for the registers from third parties (other than shareholders or for the purpose of a takeover), CSA confirms that the four improper uses of information from the register identified to date and specified in the Corporations Regulations align with the majority of requests with which our members have had to contend over these past years. CSA therefore fully supports the Corporations Regulations specifying improper purposes as:

- specific groups in the community (such as charities) soliciting donations from shareholders
- brokers soliciting clients
- obtaining information about the personal wealth of shareholders
- making off-market offers to purchase securities (other than for a takeover of an unlisted company).

CSA also supports ASIC providing guidance on what purposes will be considered proper, similar to that issued in the United Kingdom by the Institute of Chartered Secretaries and Administrators for the UK proper purpose test.

Furthermore, CSA is supportive of the proposed amendments to the Corporations Act:

- prescribing a tiered fee structure to obtain a copy of the register
- including a regulation-making power that would enable a number of formats and device mediums to be prescribed in the Corporations Regulations, and
- prescribing that, where a register of members is maintained electronically, a person seeking to inspect the register does so on a computer.

Amendment to the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*

While CSA supports the proposed amendment to the ASIC Act to permit ASIC to apply for a search warrant without first having to issue a notice to produce for the material sought, CSA is of the strong view that this amendment should not be treated by ASIC as a licence to obtain information unrelated to the issue it is investigating. That is, CSA notes that this amendment should not be used by ASIC as licence for 'fishing expeditions'.

Amendments to the *Telecommunications (Interception and Access) Act 1979*


CSA is of the view that the provision of telephone interception warrants in relation to the offences of insider trading and market manipulation is appropriate. CSA's view is that the authorities should be provided with the powers they need to investigate and successfully prosecute the offence of insider trading and market manipulation. CSA notes that the nature of insider trading and market manipulation is such that it may be very difficult to prove beyond reasonable doubt the existence of such conduct without evidence obtained through telephone interception warrants. CSA contends that the use of telephone interception warrants for the investigation of insider trading and market manipulation should be supported for the same public policy reasons as their use in the investigation of money laundering and cybercrime.

Conclusion

CSA fully support the Bill and the amendments to the Corporations Regulations setting out improper uses of the register. Our members look forward to the proclamation of the legislation, which will allow them to manage company share registers so as to protect shareholders from efforts to invade their privacy.

In preparing this submission, CSA has drawn in particular on the expertise of its national Legislation Review Committee.

Yours sincerely

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

Tim Sheehy
CHIEF EXECUTIVE